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THE LEAGUE OF NATIONS COVENANT—1939 MODEL

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Any constitutional instrument is subject to strains and stresses by reason of demonstrated inadequacy or omission at some times, and of failure to reflect the current state of mind of its constituents at others. The Covenant of the League of Nations, which is by way of a constitutional instrument in the hitherto unoccupied field between independent states, has had reputations as diverse as that of a straight-jacket and an empty sack. In the end, most of the waves of sentiment arrive at the customary human dilemma, that the trouble is not so much with the mechanism as with its human operators.

The League of Nations has had a hectic existence for an institution just emerging from its teens. Its first ten years were a series of easy successes, but the eight years just past have confronted it with problems too tough for the morale of its members; or problems have been kept away from it because, if it cut at all, it would likely come too close to the quick.

After this period of confusion, the members of the League, at the 19th session of the Assembly, took a series of actions to make the Covenant more useful to them. Resolutions of September 30, 1938, dealt with the question of the so-called separation of the Covenant from the peace treaties by approving amendments in the Preamble and Annex and Articles 1, 4, and 5 of the Covenant; and by interpretation[1] with the procedure under Article 11, par. 1; the obligations under Article 16; and collaboration of the League

[1] Previous interpretations relate to Article 15, pars. 1 and 8 (*Official Journal*, 1924, 524, and *idem*, 1926, 597, 519), and to Articles 11, par. 1, 13, and 15, "or other articles" (Council Resolution of June 7, 1928, *Official Journal*, 1928, 909–910).

and non-member states. Whether or not these decisions make any actual change from recent practice, the meaning of the Covenant is the clearer because of them, and its application will be more certain when the occasion arises. The decisions were very likely taken with an eye to their effect in a world where the United States, Germany, Italy, and Japan are outside of the League and three of them flagrantly and egotistically flouting its standards of international conduct.

The question of the so-called separation of the Covenant from the peace treaties has three historical phases: its incorporation in the treaties, its status during the existence of the League of Nations, and the effect of legal separation.

The war of 1914–18 in its later stages was a bifurcated holocaust. Every belligerent by 1918 was coping with the problem of keeping its populace up to the requisite mark of effort. Previous wars had had objectives of high policy and of military significance; this one had acquired social and ideological objectives that rested upon the aspirations of the people who were taking the trouble to support the contest and furnishing its funereal accompaniment. By January 5, 1918, this shift had reached a point where Prime Minister Lloyd George, in bargaining with organized labor to provide the manpower for the factories and the trenches, attempted to satisfy "any misgivings and doubts which any of them may have about the purpose to which this precious strength is to be applied."[2] President Wilson's address to Congress on January 8,[3] containing the Fourteen Points, while independently written, went over the same ground in more precise fashion. The one promised "the creation of some international organization," the other called for "a general association of nations;" and in other belligerent countries the same objective was conceded to be the most persuasive argument in keeping supplies going to the trenches and the trenches filled with human targets. This potent ideology had got into the war psychosis by way of the League to Enforce Peace, whose program was admirably adapted for urging community organization as a successor to war while war itself was in progress. At least two belligerents sent agents to the United States to look into that program

[2] *Foreign Relations*, 1918, Sup. 1, 4. The speech answered a memorandum of "war aims" by the Labor party (*War Aims of Belligerents, as Elicited by Russia's Attempts to Secure a General Peace*, 118. Boston, World Peace Foundation, 1918).

[3] *Foreign Relations*, 1918, Sup. 1, 12.

and to promote it at home.[4] Wilson's fourteenth point was, of course, one of the conditions on which the Germans saved their face with the armistice of November 11, 1918.

When the Preliminary Peace Conference, the victorious belligerents, gathered at Paris, the creation of a league of nations was settled in principle, but the time of its appearance was not fixed. Two views were possible, but the conference did not officially consider establishing a league after the peace was negotiated. The British delegation proposed, Wilson slightly revised, the Council of Ten approved, on January 22, 1919; and the plenary session of the Conference on January 25 adopted the following resolution:[5]

> The Conference, having considered the proposals for the creation of a League of Nations, resolves that
>
> 1. It is essential to the maintenance of the world settlement which the Associated Nations are now met to establish, that a League of Nations be created to promote international coöperation, to insure the fulfillment of accepted international obligations, and to provide safeguards against war.
>
> 2. This League should be created as an integral part of the general Treaty of Peace, and should be open to every civilized nation which can be relied on to promote its objects.
>
> The Conference therefore appoints a Committee representative of the Associated Governments to work out the details of the constitution and functions of the League.

This decision determined the direction of action, and at the time it was fully accepted as the sound method, except in spots in the United States.[6] The Republican members of the Senate argued for separation and made it an initial point in their struggle to revise the peace-making in which the Democratic President was taking the leading part. On March 3, 1919, Senator Henry Cabot Lodge, being refused unanimous consent for consideration of a resolution, read it into the *Congressional Record*[7] as a round robin signed by

[4] In this connection are pertinent the documents and correspondence of Theodore Marburg in John H. Latané (ed.), *Development of the League of Nations Idea* (New York, Macmillan, 1932).

[5] David Hunter Miller, *The Drafting of the Covenant*, I, 76, 81–82; U. S. Congress, Committee on Foreign Relations, "Treaty of Peace with Germany," *Hearings*, 66th Cong., 1st Sess., Sen. Doc. 106, p. 263; Ray Stannard Baker, *Woodrow Wilson and World Settlement*, 1, 233 ff. Mr. Miller's chapter, pp. 76–100, is a well-balanced account.

[6] On Secretary Robert Lansing's rejected ideas, see his *The Peace Negotiations; a Personal Narrative* (New York, Houghton Mifflin, 1921), p. 61.

[7] Vol. 57, pt. 5, p. 4974; Denna F. Fleming, *The United States and the League of Nations, 1918–1920* (New York, Putnam, 1932), p. 153 ff.

thirty-seven Republican senators (more than the one-third necessary to defeat a treaty) who would be members of the Sixty-sixth Congress that would debate the treaty. This paper expressed the view that negotiating peace terms should be pursued with "the utmost expedition," and that the proposal for a league of nations "should be then taken up for careful consideration." President Wilson prepaid insurance on the life of the argument on March 4 by challengingly predicting to "gentlemen on this side" not only that the Covenant would be "in the treaty," but that so many threads of the treaty would be tied to the Covenant that "you cannot dissect the Covenant from the treaty without destroying the whole vital structure."[8] After the big wind of debate had died down, the prevalent American view was that incorporating the Covenant in the treaties was at least a crime, and probably a blunder.

At Paris, the Covenant was reported to the plenary session of the Preliminary Peace Conference by the League of Nations Commission on February 14 and published. The commission revised it in five meetings from March 22 to April 11, hearing delegations of thirteen neutral states in two additional sessions.[9] The instrument went through several drafting stages in the commission, which produced its final report on April 28.[10] Some final changes were made later by the Drafting Committee of the Conference before the "conditions of peace" were ready for the Germans on May 7.[11]

The treaty of peace with Germany signed at Versailles on June 28, 1919, of which the Covenant was Part I, came into force by the deposit of a *procès-verbal* of ratifications at the French Foreign Office on January 10, 1920, at 4:15 P.M. As a consequence, at that moment the League of Nations came into existence under the terms of the Covenant, a treaty within a treaty. The diplomatic machinery employed for the making of the treaty itself, the Supreme Council and the Supreme War Council, atrophied or was passed to the Conference of Ambassadors or its functions continued under the Reparation Commission or other organizations under the

[8] Speech at the Metropolitan Opera House, New York, March 4, 1919, *International Conciliation*, Spec. Bul., Mar., 1919, p. 64. Former President Taft, on the same platform, took the same attitude. See Denna F. Fleming, *op. cit.*, pp. 160–165.

[9] Miller, *op. cit.*, II, pp. 592–645. [10] *Idem*, pp. 683, 695.

[11] Miller, *op. cit.*, I, pp. 498–504. Changes at that stage in the Preamble and Articles 4 and 5 are now subjects of amendments.

treaty. The Peace Conference, in its plenary session of April 28, 1919, had adopted a resolution naming the first Secretary-General of the League and designating the states to be first represented on the Council[12] to form an Organization Committee to report both to the Council and Assembly. Thus, when the League was born, its member states already had its parturitional affairs in their own hands quite distinct from any relations under the treaty of Versailles. Though it seems never to have been mentioned, the relation of the instruments and of action under them was parallel to that established by the Final Act of Vienna of June 9, 1815, and the Constitution of the Germanic Confederation (Annex IX) which was provided for by the detailed principles of Articles 53–64 of the final act.[13]

The decision to effect a "so-called separation" of the Covenant from the peace treaties was taken more to eliminate a strategic criticism than as a legal reform. The best opinion for years has been that the Covenant is an independent instrument, despite its origin as Part I of the four treaties of peace with Germany, Austria, Bulgaria, and Hungary. On that account, the Assembly was unwilling to admit that a "separation" was necessary,[14] while recognizing that verbal changes would clarify a technical situation that was mingled with political assumptions. Nothing is so awkward or without profit as a legal complexity without value but prejudicial in its nature.

Points which have been held to require "separation" may be reviewed. A group of "original members" became such by ratifying treaties of peace, and legislative or administrative action required to fulfill obligations of the League has been taken by some of them in virtue of the authority for that ratification.[15] The general rule

[12] The United States, British Empire, France, Italy, Japan, Belgium, Brazil, Greece, and Spain.

[13] 2 *British and Foreign State Papers*, 31, 54, 114; Martens, *Nouveau recueil de traités*, II, pp. 353, 406, 430.

[14] The Sixth Committee said that "no question of principle was involved, but only one of form." (A.78.1938.VII). The committee also emphasized that League of Nations action to establish the independence of the Covenant does not effect a modification of the peace treaties, for which only the parties to them are competent.

[15] In the Union of South Africa, the Treaty of Peace and Southwest Africa Mandate Act, 1919; United Kingdom, Treaty of Peace Act, 1919, Treaty of Peace (Covenant of the League of Nations) and orders in council, 1935; France, law of October 12, 1919; Poland, *Legal Gazette*, 1920, No. 35, item 200; (Dispute between Ethiopia and Italy, Coördination of Measures under Article 16 of the Covenant,

of unanimity was relaxed in Article 5, par. 1, of the Covenant with respect to Council action on matters referred to it if "expressly provided . . . by the present treaty." On that provision was based an argument that the League was an implement to execute the peace treaties, notwithstanding that the fundamental principle of the Covenant made its organs available to any members or non-members for the adjustment of their differences or relations under either the Covenant itself or their own systems of treaties.[16] A political impetus was given to the idea by a German memorandum of March 7, 1936, embodying proposals "for the creation of a system of peaceful security for Europe" which included a willingness to reënter the League of Nations, with the "expectation that in the course of a reasonable period the question of colonial equality of rights and that of the separation of the League Covenant from its Versailles setting may be clarified through friendly negotiations."[17]

The immediate event which led to consideration of the question, however, was the resolution of the Assembly of July 4, 1936, initiating an invitation to government members of the League to send "any proposals they may wish to make in order to improve . . . the application of the principles of the Covenant."[18] As ana-

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Proposals and Resolutions of the Coördination Committee and the Committee of 18 . . . , Official Journal, Spec. Sup. No. 150, pp. 18, 58, 132, 238). See generally, C. A. Kluyver, *Documents on the League of Nations* (Leyden, Sijthoff, 1920).

[16] Three circumstances contributed to the popularity of this thesis: (1) the identity of the "principal allied powers" with the permanently represented members of the Council; (2) the priority and notoriety of the treaties of peace in utilizing the jurisdiction of the Council; and (3) disregard of or lack of credence in the technical fact that the Council meticulously and specifically in each case of assignment reserved to itself the decision on whether the matter properly fell within its functions under the Covenant.

[17] United Kingdom, *Correspondence Showing the Course of Certain Diplomatic Discussions Directed Toward Securing an European Settlement*, June, 1934, to March, 1936 (Misc. No. 3 [1936], Cmd. 5143), p. 79. A more elaborate "peace plan" of March 31 included the same offer in slightly different terms (*Correspondence with the German Government Regarding the German Proposals for an European Settlement, March 24–May 6, 1936* (Misc. No. 6 [1936], Cmd. 5175), pp. 10–11, 16. In a later speech (February 20, 1938), Herr Hitler asserted that Germany would "never join it again, because we have no intention of being involved in the defense of injustice in some part of the world by a majority decision of the League." He dilated upon his conception—at the moment of speaking—of "injustice."

[18] *Documents Relating to the Question of the Application of the Covenant* (*Official Journal*, Spec. Sup. No. 154), p. 6. The resolution was adopted simultaneously with a resolution to halt the application of Article 16 in the dispute between Ethiopia and Italy.

lyzed by the Secretariat, the resulting suggestions fell under seventeen main headings; and Australia, Austria, Canada, Haiti, Iraq, Panama, and the United Kingdom made proposals for separating the Covenant from the peace treaties.[19] The Assembly, on October 10, 1936, appointed twenty-eight member states to a Special Committee Set up to Study the Application of the Principles of the Covenant.[20] A Committee of Ten Jurists appointed by the Special Committee brought in a report on September 29, 1937,[21] which was circulated to governments and came before the 19th session of the Assembly. On the proposal of its Sixth Committee, the Assembly adopted, on September 30, 1938, a resolution which is quoted in full as a League of Nations exposition of the status of the Covenant:[22]

The Assembly,

Considering that, whatever the procedure be whereby various States have entered or may enter the League of Nations, the Covenant is a constitution common to all the Members of the League, regulating their relations with the object of developing coöperation between them and assuring them peace and security;

Considering that, from the first, the Covenant has had an independent existence which is expressed in particular:

(1) In its essential purpose, which is to establish a permanent institution;

(2) In the existence of an Assembly and Council, through the instrumentality of which League action is effected;

(3) In the procedure provided by the Covenant for admission into the League of Nations;

(4) In the power given to Members of the League to amend the Covenant in conformity with the provisions of Article 26;

Considering that Members of the League of Nations have the same rights whatever be the date and method of their entry into the League;

Desiring, after having thus indicated these essential characteristics of the Covenant, to remove certain difficulties arising out of a number of expressions employed therein, which, if they were to remain, might be considered an obstacle to the entry of other States into the League of Nations;

Noting that, in order to attain this end, certain amendments should be

[19] *Idem*, p. 96.

[20] *Resolutions Adopted by the Assembly . . .* 1936 (*Official Journal*, Spec. Sup. No. 153), p. 40. The governments represented were the Argentine Republic, Austria, Belgium, Bolivia, Bulgaria, Canada, Chile, China, Colombia, Czechoslovakia, France, Greece, Iran, Italy, Latvia, Mexico, Netherlands, New Zealand, Poland, Portugal, Rumania, Soviet Union, Spain, Sweden, Switzerland, Turkey, United Kingdom, and Uruguay.

[21] C.494.M.335.1937.VII. [22] A.78.1938.VII.

introduced into the Covenant according to the procedure of Article 26, amendments which alter neither the real effect nor the spirit of the Covenant and which, it is hoped, will be promptly agreed to by Governments;

Believing that the proposed amendments will meet the desire to extend the membership of the League of Nations;

Decides:

(1) To recommend to Governments of Members the prompt ratification of the Protocol embodying the amendments referred to above;

(2) To request the Secretary-General to communicate the present resolution and the text of the said amendments to Members of the League and to States non-members to be named by the Council.[23]

The eight amendments adopted on September 30, 1938, and incorporated in the protocol for ratification to "come into force in accordance with the provisions of Article 26 of the Covenant,[24] may be reviewed.

The Preamble of the Covenant as Part I of the peace treaties expresses the conventional pledge by beginning and ending with these words: "The high contracting parties . . . agree to this Covenant of the League of Nations." When the amendment is in force, the Preamble will be generalized to read:[25]

In order to promote international coöperation and to achieve international peace and security

by the acceptance of obligations not to resort to war,

by the prescription of open, just, and honorable relations between nations,

by the firm establishment of the understandings of international law as the actual rule of conduct among Governments, and

by the maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organized peoples with one another,

This Covenant has been adopted for the establishment of the League of Nations.[26]

Two of the amendments in the protocol of September 30, 1938, strike out of the Covenant Article 1, par. 1, and the first part of the Annex, which now read:

Article 1. 1. The original Members of the League of Nations shall be those of the Signatories which are named in the Annex to this Covenant

[23] The communication was to the United States, Brazil, Costa Rica, Germany, Guatemala, Honduras, Japan, and Nicaragua (Minutes of the 103d Session of the Council, Minute 4096).

[24] These provisions read:

"1. Amendments to this Covenant will take effect when ratified by the Members of the League whose Representatives compose the Council and by a majority of the Members of the League whose Representatives compose the Assembly."

[25] The amendments are quoted from the protocol, A.79.1938.V.

[26] Italics in the text indicate amending language.

and also such of those other States named in the Annex as shall accede without reservation to this Covenant. Such accession shall be effected by a Declaration deposited with the Secretariat within two months of the coming into force of the Covenant. Notice thereof shall be sent to all other Members of the League.

Annex to the Covenant

[The asterisk preceding names indicates that the state is not now a Member of the League.]

I. *Original Members of the League of Nations, Signatories of the Treaty of Peace*

*United States of America
Belgium
Bolivia
*Brazil
British Empire
Canada
Australia
South Africa
New Zealand
India
China
Cuba
Ecuador
France
Greece
*Guatemala
Haiti
*Hejaz
*Honduras
Italy
*Japan
Liberia
*Nicaragua
Panama
Peru
Poland
Portugal
Roumania
Serb-Croat-Slovene State
Siam
Czechoslovakia
Uruguay

States Invited to Accede to the Covenant

Argentine Republic
Chile
Colombia
Denmark
Netherlands
Norway
Paraguay
Persia
Salvador
Spain
Sweden
Switzerland
Venezuela

The decision to eliminate the distinction between "original" and "admitted" members and between original ratifying and acceding members closes a chapter in the differentiation of states that is already historical. The treaties of peace were concluded between the belligerents in the war of 1914–18. In form, they were bilateral, the "party of the first part" consisting of thirty-two states (as to Versailles) on the winning side and the "party of the second part," the state which in each case was defeated (Germany, Versailles; Austria, St. Germain-en-Laye; Bulgaria, Neuilly; and Hungary, Trianon). The Peace Conference did not favor any automatic admission of the defeated states to the League of Nations. On March 22, 1919, the idea of naming in an annex to the Covenant the states eligible to original membership was broached in the

League of Nations Commission and was eventually adopted.[27] The annex was difficult to construct, and it could not be logically made. The group of belligerents forming the "party of the first part" of Versailles included all the belligerents of the "first part" in the other treaties, but President Wilson succeeded in eliminating Costa Rica from the conference, and thereby from original membership in the League, by the omission of its name from the annex.[28] The "states invited to accede," being neutrals in the war, did not include the Dominican Republic and Mexico, on the same initiative. Costa Rica and the Dominican Republic went through the regular procedure of applying for admission in 1920 and 1924, but the Assembly in 1931 invited Mexico to accede, because "the League should now in all justice repair this omission which is wholly contrary to its true spirit."[29] The defeated belligerents—Germany, Austria, Bulgaria, and Hungary—by the device of the Annex were in the anomalous situation of being obligated under the Covenant (as Part I of the respective treaties of peace) without being entitled to benefits under it. With those seven exceptions (the defeat of the Ottoman Empire did not stick), the Covenant's Annex was intended to include the states of the 1919 world.

In the League of Nations, there has never been any legal or *de facto* difference between "original" and "admitted" members except the mechanism of their acquiring membership. The disappearance of the Annex affects the potential membership of the states mentioned therein which are not members. Ecuador, though it did not ratify its signature of the treaty, announced on September 27, 1934, that it had "decided to become a member," and the Council simply took note of the decision as constituting accession.[30] At present, the United States, Brazil, Guatemala, Hejaz,[31] Honduras, Japan, and Nicaragua could utilize the same procedure. If Paraguay is to be regarded as a non-member notwith-

[27] Miller, *op. cit.*, I, p. 319; II, p. 342; see also I, pp. 397, 409, 466, 476; II, pp. 694, 717.

[28] Miller, *op. cit.*, I, p. 467. For the circumstances as to Costa Rica, see Warren H. Kelchner, *Latin American Relations with the League of Nations* (Boston, World Peace Foundation, 1929), pp. 39, 51.

[29] League of Nations, *Resolutions and Recommendations Adopted by the Assembly . . .* 1931 (*Official Journal*, Spec. Sup. No. 92), p. 41. This action was, of course, a criticism of the Wilson policy accepted by the conference.

[30] *Official Journal*, 1934, p. 1468.

[31] The kingdom of Saudi Arabia is the successor state, and the choice open to the Hejaz would presumptively extend to it.

standing the non-fulfilment of its obligations under the Covenant, it could by virtue of the Annex resume membership by an instrument of accession.[32] When Article 1, par. 1, and the Annex disappear from the Covenant, those states will lose this discrimination in their favor. The protocol of signature of December 16, 1920, covering the Statute of the Permanent Court of International Justice remains open for signature by members of the League and "by the states mentioned in the Annex to the Covenant," and by Article 35 of the Statute the "Court shall be open to" the same groups of states. Should the question arise after the elimination of the Annex, some state now mentioned in the Annex might find its access to the Court solely conditional upon making the declaration prescribed in Sec. 1 of the Council resolution of May 17, 1922.[33]

The Committee of Ten Jurists rejected the idea of attaching to the Covenant an annex giving a currently up-to-date list of members;[34] however, the Secretariat since 1937 has issued for the Council and member states an annual list of the members.[35] This was a wise decision, as the erosion of time upon the list of 1919 has shown. The list contains forty-five states. Altogether, sixty-three states have been members and 54/55[36] were members at the end of 1938. Counting Paraguay, eight of the states listed in 1919 are out, but fifteen not then named are in, and seven of them were not potentially eligible in 1919. The names of several have changed, the "British Empire" having been superseded in representation by the United Kingdom of Great Britain and Northern Ireland, Persia having become Iran, and the Serb-Croat-Slovene State, Yugoslavia; the Hejaz is part of Saudi Arabia.

The elimination of the first paragraph of Article 1 and the Annex will leave admission by agreement of the Assembly as the sole

[32] Italy of the "signatory" list, and Chile, El Salvador, and Venezuela of the "accession" list, have notices of intention to withdraw maturing.

[33] *Official Journal*, 1922, p. 545. The resolution since March 11, 1936, is an annex to the Rules of Court.

[34] *Report of the Committee of Ten Jurists* . . . 3 (C.494.M.335.1937.VII).

[35] Documents C.27.M.17.1937, and *Members of the League and Composition of the Council*, September 21, 1938.

[36] Paraguay's "obligations under the Covenant" were not fulfilled at the expiration of its notice of withdrawal on February 23, 1937. See *Records of the 19th Session of the Assembly*, Meetings of the Committees, *Minutes of the 4th Committee*, 153 (*Official Journal*, Spec. Sup. No. 173), and Assembly resolution of October 5, 1937, in A.76.1937.X; *idem*, Plenary Meetings, 120, 147 (*Official Journal*, Spec. Sup. No. 169).

method for a state to become a member of the League. Article 1, par. 2, would be altered by omitting the qualifying phrase "not named in the Annex" and become the first paragraph in this form:

> Any fully self-governing State, Dominion, or Colony *not being a Member of the League of Nations* may become a Member thereof if its admission is agreed to by two-thirds of the Assembly, provided that it shall give effective guaranties of its sincere intention to observe its international obligations, and shall accept such regulations as may be prescribed by the League of Nations in regard to its military, naval, and air forces and armaments.

Two forms of admission have been followed by the Assembly. Applicant states have furnished evidence of their "effective guaranties," which have been passed upon by an Assembly committee, and the Assembly has voted upon the admission. In three cases—Mexico, the Soviet Union, and Turkey—the Assembly has invited the state to take membership, and, following acceptance, the Assembly has voted the admission without a prior passing upon formally submitted evidence of the "guaranties." Either form of procedure might be followed under the revised paragraph.

The primary reason for amending Article 4 of the Covenant was to eliminate treaty of peace nomenclature, and the secondary purpose to get rid of language no longer necessary. The present and proposed texts are as follows:

Article 4

1. The Council shall consist of representatives of the Principal Allied and Associated Powers [United States of America, the British Empire, France, Italy and Japan], together with Representatives of four other Members of the League. These four Members of the League shall be selected by the Assembly from time to time in its discretion. Until the appointment of the Representatives of the four Members of the League first selected by the Assembly, Representatives of Belgium, Brazil, Greece and Spain shall be Members of the Council.	1. The Council shall consist *of Members of the League of Nations entitled to a permanent seat on the Council,* and of other Members entitled to a temporary seat thereon. The latter* shall be selected by the Assembly from time to time at its discretion. *(The Members of the League entitled to a permanent seat on the Council on September 30, 1938, were: the United Kingdom of Great Britain and Northern Ireland, France, Italy, and the Union of Soviet Socialist Republics)
2. With the approval of the majority of the Assembly, the Council may name additional Members of	2. *In addition to the Members of the League that have a permanent seat,* the Council may, with the ap-

the League, whose Representatives shall always be Members of the Council; the Council with like approval may increase the number of Members of the League to be selected by the Assembly for representation on the Council.

proval of the majority of the Assembly, name additional Members of the League whose Representatives shall always be members of the Council; the Council with like approval may increase the number of Members of the League to be selected by the Assembly for representation on the Council.

The composition of the Council under these two paragraphs has long since ceased to be the original prescription. The League of Nations Commission, in drafting the Covenant, contemplated that the Council was to consist of five big states (permanently represented) and four smaller states (temporarily represented). The big states wanted a numerical superiority, though its practical voting utility could affect only matters of procedure or certain decisions under "the terms of the present treaty." However, the failure of the United States to take up its seat defeated the idea from the outset. By operation of paragraph 2, the composition described in the original paragraph 1 has been changed repeatedly. The temporary seats were increased from four to six on September 25, 1922, partly to get enough *rapporteurs* for the Council's tasks, and partly to satisfy the desire of the small states for a larger influence in the Council; the small states have ever since had a preponderance of numbers in the body. On September 8, 1926, Germany was awarded a permanent seat[37] and the temporary seats were increased from six to nine, and to ten on October 9, 1933. The Soviet Union was assigned a permanent seat on September 15, 1934, and an eleventh temporary seat was created October 3, 1936. Since 1926, two temporary members of the Council have been consecutively reëlected, and other temporary members represent three Latin American states, one Scandinavian state, one Little Entente state, one British Commonwealth state, and one Asiatic state. The revision in no way reflects those changes or affects such evolution in the composition of the Council. The only potential change that it makes is that the United States, in the event of becoming a member of the League, could not take up a permanent seat on the Council but would have to be voted to it.[38]

The final amendment to effect the so-called separation of the

[37] Occupied until October 14, 1933, and assigned until October 30, 1935.

[38] The same condition would apply if Japan should again become a member.

Covenant from the peace treaties is of considerable interest and is quoted in parallel with the original:

Article 5

1. Except where otherwise expressly provided in this Covenant or by the terms of the present Treaty, decisions at any meeting of the Assembly or of the Council shall require the agreement of all the Members of the League represented at the meeting.	1. Except where otherwise expressly provided in this Covenant *or by agreements conferring certain powers on the League of Nations*, decisions at any meeting of the Assembly or of the Council shall require the agreement of all the Members of the League of Nations represented at the meeting.

This change not only is clarifying, but puts into the Covenant a most useful provision which has been understood and acted on from the beginning of the League of Nations. The organs of the League are obviously available to member states in helping them to effectuate the purposes of the Covenant as set forth in the Preamble. If states aver that a condition, circumstance, or dispute exists among them which falls within the jurisdiction of Articles 11, 12, 13, 15, 17, or 19 of the Covenant, the Council (or Assembly) has no choice but to consider it. If they envisage in their own treaty relations contingencies in which action of the League organs would be beneficial to them, the obligation to give effect to the desire is *prima facie* as exigent. The Council has been hospitable to requests of that character, fully realizing that the terms of the treaties concerned frequently restricted its own action to a single phase of a complex relationship, and consistently striving to bring the parties into agreement more than to pass judgment upon their affairs.

The treaty of Versailles, the most elaborate of the peace treaties, mentions the League of Nations in the sense described twenty-nine times in the 373 articles and the 188 paragraphs of the annexes not comprised in the Covenant (Part I) or the Constitution of the International Labor Organization (Part XIII). Of the twenty-two assignments of jurisdiction, six relate to arbitral action or arbiters,[39] three to the Saar,[40] two to Danzig,[41] two to armaments,[42] two to general communicative conventions,[43] two to revision of pro-

[39] Articles, 48, 98, 289, 304, 336, 376, 386.

[40] Articles 48 (commission), 49 (trustee), Annex 34 (plebiscite).

[41] Articles 102, 103.

[42] Articles 164 (level of material), 213 (investigation).

[43] Articles 338 (international waterways), 379 (international transit, waterways, ports, or railways).

visions[44] and one each to Eupen-Malmédy, Austria, commercial relations, treatment of nationals, and social insurance in ceded territory.[45] Of these matters, fourteen[46] were discharged, six[47] were not acted upon, and two[48] are potentially citable. In five cases of jurisdiction assigned to the League, the Council was authorized to act by majority vote.[49] While this purely physical analysis of the relation between the treaty of Versailles and the Covenant takes no account of the importance of the assignments of jurisdiction, it does indicate the bounds in which the question should be considered. It shows that the controversial questions were not referred to the League[50] and reflects the type of problem which states have referred to the League in other treaties.

The 19th session of the Assembly took an important step in clarifying the implications of Article 16 of the Covenant, which has been misunderstood and malpracticed. There is still no agreement, and the situation remains complex, as can be seen from the resolution of September 30, 1938: "The Assembly decides to communicate the present report, together with its annexes, to all the Members of the League."

The *Report by the Sixth Committee on Questions Relating to Article 16 of the Covenant*,[51] in addition to providing for annexing "all the declarations and observations on the subject which have been made before the Assembly and the committee,"[52] avoids expressing any opinion on their contents or "on a *de facto* situation which,

[44] Articles 377, 378 (waterways and railways).

[45] Articles 34, 80, 280, pars. 1 and 2, 312.

[46] Articles 34 (Eupen-Malmédy); 48, 49, and Saar annex; 102 and 103 (Danzig); 164 and 213 (armament); 304 (Mixed Arbitral Tribunal); 312 (social insurance); 336 (waterway jurisdiction); 338 and 379 (communicative conventions); 376 (port, railway, waterway disputes).

[47] Articles 80 (Austria, but corresponding article (88) of treaty with Austria was applied); 98 (German-Polish "corridor"); 280 (commercial relations and treatment of nationals); 289 (revival of treaties); 342 (Niemen river administration).

[48] Articles 377 (revision of port, railway, waterway clauses); 386 (Kiel Canal).

[49] The Saar régime (Articles 48, 49, Annexes 34 and 40); armament investigation (Article 213); treatment of nationals (Articles 276, 280).

[50] The Conference of Ambassadors did enlist the Council's aid in several difficult questions which the parties to the treaties were themselves unable to solve. Myers, *Handbook of the League of Nations*, 303 (Albania), 305 (Upper Silesia), 312 (Jaworzina), 313 (Corfu), 315 (Memel).

[51] A.74.1938.VII.

[52] The compiled document is C.444.M.287.1938.VII.2, as cited. The declarations and observations were made in the 3d to 8th plenary meetings (September 13–21, 1938) and in the 4th to 9th meetings of the Sixth Committee (September 22–28, 1938).

according to certain delegations, is thus created."[53] The report contains two expository paragraphs:

> No proposal to amend the Covenant was made to the Committee, and the principles of the Covenant remain unaltered. It is clearly the general view that those principles are right and sound. It was emphasized that recourse to war against a Member of the League, whether immediately affecting any other Member of the League or not, is a matter of concern to the whole League and could not be considered as one in regard to which the Members are entitled to adopt an attitude of indifference, and that, should such a situation arise, there would be consultation between them.
>
> There is general agreement that the military measures contemplated in Article 16 are not compulsory. As regards the economic and financial measures, many Members of the League have stated that they could not in present conditions consider themselves bound automatically to apply such measures in any conflict. Some other Members expressed the contrary view.

This restricted feint at a semblance of agreement leaves Article 16 still, as before, the central contentious problem of world order. Every sort of ideological wave has battered at it, and it remains "unaltered." The Assembly's slow-motion gesture neutralizes the contending forces with respect to the current disposition of statesmanship and the prevalent atmospheric pressure of political thought. It is an evolutionary step in a process of understanding a legal formula and trying to apply it.

What we have had, have, and may have can be most easily disclosed by examining the applicable text in its actual terms, stripped of any preparatory conceptions and isolated from any interpretations, whether legal, philosophical, political, pragmatic, or otherwise. No one now questions in the League of Nations that "any war or threat of war, whether immediately affecting any of the Members of the League or not, is . . . a matter of concern to the whole League." As a standard of conduct, the members as definitely agree that "they will submit" to some third-party consideration "any dispute likely to lead to a rupture" and refrain from "resort to war" until after the verdict is rendered; jurisdictional options are set forth in Articles 12, 13, and 15. Out of that context, Article 16 reads and verbally it stipulates:

> 1. Should any Member of the League resort to war in disregard of its covenants under Articles 12, 13, or 15, it shall *ipso facto* be deemed to have

[53] The form of this language was debated in the 9th meeting of the Sixth Committee.

committed an act of war against all other Members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant-breaking State, and the prevention of all financial, commercial or personal intercourse between the nationals of the covenant-breaking State and the nationals of any other State, whether a Member of the League or not.

2. It shall be the duty of the Council in such case to recommend to the several Governments concerned what effective military, naval or air force the Members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League.

3. The Members of the League agree, further, that they will mutually support one another in the financial and economic measures which are taken under this Article, in order to minimize the loss and inconvenience resulting from the above measures, and that they will mutually support one another in resisting any special measures aimed at one of their number by the covenant-breaking State, and that they will take the necessary steps to afford passage through their territory to the forces of any of the Members of the League which are coöperating to protect the covenants of the League.

4. Any Member of the League which has violated any covenant of the League may be declared to be no longer a Member of the League by a vote of the Council concurred in by the Representatives of all the other Members of the League represented thereon.

The Assembly correctly avers that these provisions remain "unaltered," so that we may appropriately consider what they really say. The repeated attempts to adjust these principles to life, or life to them, have encountered several points that are clear in the text but obscure in the reasoning about them. They may be listed as follows: (1) Only "disregard of its covenants [agreements or undertakings] under Articles 12, 13, or 15" by a member is involved. (2) This disregard must be a "resort to war." (3) No indication of who shall or may determine the existence of these conditions is given.[54] (4) That determination having occurred, it compulsorily and *ipso facto* establishes that the state concerned is "deemed to have committed an act of war against all other members of the League." (5) It neither defines nor delineates the relation of the other members toward the offending state. (6) By the treaty law of the Covenant, the offending state is in a status of

[54] In the dispute between Ethiopia and Italy, "the Members of the Council, other than the parties" (not the Council other than the parties) agreed "with the conclusions" of the crucial report (*Official Journal*, 1935, p. 1225). The Assembly took "cognizance of the opinions" of the Council and set up the Coördination Committee for effecting "measures which they may severally contemplate" (*Records of the 16th Ordinary Session of the Assembly, Plenary Meetings*, 113 (*Official Journal*, Spec. Sup. No. 138).

"resort to war," and the other members of the League undertake specified counteraction, the effect of which cannot legally and of itself constitute "resort to war" or create a mutual state of war.[55] (7) Determinations 1 and 2 above having been established, members of the League "undertake immediately" to subject the covenant-breaking state to measures intended to sever trade and financial relations, prohibit personal intercourse, and prevent financial, commercial or personal intercourse.[56] (8) Determinations 1 and 2 above having been established,[57] "it shall be the duty of the Council . . . to recommend to the several Governments" contributions to "armed forces to be used to protect the covenants of the League." (9) Mutual support and assistance to one another are the subject of a further agreement. (10) Hospitable passage of the forces indicated through their territories is an agreed obligation of the states.

The superficial picture which these points of the system creates is that of an automatically acting collectivity for a limited purpose. No one can doubt that the system has automatic features, if it is set in motion. Some one, however, has to set it in motion, and until that is done it is neither automatic nor obligatory. Every consideration that actuates the decisions of states may be a factor in starting the system into operation. No state or person is obligated in life to adduce a law for his own benefit, long or short, or for his own inconvenience, real or supposititious; to assume that states should make the determinations which put Article 16 in operation

[55] See report by the Secretary-General, May 17, 1927, *Official Journal*, 1927, pp. 834–835. It does not follow that states will actually pursue this indubitable sequence of reasoning. In the Ethiopian-Italian dispute, the United Kingdom government assumed that hostile military contact would degenerate into a mutual state of war. But see the memorandum of January 22, 1936, "Dispute between Ethiopia and Italy . . . *Proposals and Resolutions*" (*Official Journal*, Spec. Sup. No. 150, pp. 332–337).

[56] Five proposals put into effect during the Ethiopian-Italian dispute gave substance to some phases of this comprehensive undertaking. "Dispute between Ethiopia and Italy, *Proposals and Resolutions* (*Official Journal*, Spec. Sup. No. 150, pp. 1–12).

[57] From the appearance of the phrase "in such case" in the text of Article 16, par. 2, it is possible to argue that the severance of economic relations might also be regarded as a prior condition. An amendment pending since 1925 to strike out that clause would strengthen an interpretation that the Council's duty was simultaneous with the incidence of the economic undertaking. It has, however, been a general assumption that economic sanctions are "obligatory" and military sanctions "optional," since the Council only makes a recommendation.

on any other than bases of their own selection is contrary to human nature, which is the primary legal fact. The discretionary character of that essential premise of Article 16 is basic.

The resolution of September 30 is another milestone in the history of Article 16. The first session of the Assembly studied the "economic weapon" and asked for an International Blockade Committee on whose recommendation the second session in 1921 adopted "directions" for the application of the article.[58] Four amendments were formulated, but did not come into force. One of these, redefining sanctions, was amended in 1924, and a sixth drafting amendment was voted in 1925; neither is in force. The draft treaty of mutual assistance of 1923 attempted to implement the article as a feature of a regional system of security. The draft (Geneva) protocol for the pacific settlement of international disputes of 1924 aimed to create a complete system of pacific settlement, to define the aggressor, and to extend Article 16 to any violation of that system; but it did not come into force. From 1925 to 1930, sanctions were studied by the Preparatory Commission for the Disarmament Conference as a phase of a security system leading to disarmament, one result of which was the Brouckère report analyzing their application.[59] The Locarno settlement in 1925 developed a formula which strongly reflected the synthesis of the Geneva protocol and influenced both plans and thought before and after it was in force. The evolution of that policy took place in the Committee on Arbitration and Security which produced projects on conciliation, arbitration, judicial settlement, mutual assistance, and non-aggression. From this work grew the important general act for the pacific settlement of international disputes, September 26, 1928.[60] By this time the strategy had evolved into a conception of coördinating territorial immunity (Article 10), prevention of war (Article 11), and sanctions (Article 16), the interrelation being studied in the notable Rutgers report.[61] The signing of the treaty for renunciation of war on August 27, 1928, and its subsequent entrance into practically universal force, gave an impetus to the thesis of forestalling aggression by inventing mechanisms for its identification and making it hazardous by

[58] *Reports and Resolutions on the Subject of Article 16 of the Convenant*, 42 (A.14. 1927.V.14). This document summarizes action and reprints papers up to June, 1927. [59] *Idem*, p. 60. [60] 93 *Treaty Series*, 343; Reg. No. 2123.

[61] *Official Journal*, 1928, pp. 670–686

organizing concerted opposition to it. On October 2, 1930, a convention on financial assistance was opened for signature, and on September 26, 1931, a general convention to improve the means of preventing war; both were to go into force with a "disarmament" convention.

The Sino-Japanese dispute of 1931–33, resulting in the alienation of Manchuria and a League verdict against Japan, created a widespread feeling that Article 16 should have been applied. The verdict, however, was rendered under Article 15, par. 4, and Japan was within its technical rights in voting against the recommendations and not acting upon them, notwithstanding universal condemnation. Such a "disregard of its covenants" as was requisite to bring Article 16 into application was not found to be present. On May 10, 1933, Paraguay declared a "state of war with Bolivia" in the lengthy Chaco dispute, which was in the cognizance of the Council under Article 11. Paraguay claimed that this was not a resort to war in the sense of Article 16, and Bolivia implied the contrary; but the Council passed over both arguments.[62] An embargo on the sale of arms was put into effect against both states as a "general, collective, and international" measure adopted by thirty-four states by the individual decisions of their governments;[63] it was raised after the signing of the peace protocol on June 22, 1935.

The conception of a collective security grew out of this soil. A part devoted to "security" was included in the draft "disarmament" convention prepared by the British delegation as the consensus of the conference and adopted as its basis of work on March 16, 1933. The principles of Article 16 permeated the discussion, which ended in draft instruments employing consultation as a step before setting concerted coercive measures in motion.[64] A decision foreswearing "resort to force as an instrument of national policy" was taken. In July, 1933, the Soviet Union, taking one of these drafts, embarked on the negotiation of a series of conventions defining aggression which described the acts committed by Japan in Manchuria. The Rio de Janeiro "anti-war" treaty of October 10, 1933, embodied condemnation of aggression, the non-recognition

[62] *Official Journal*, 1933, pp. 754, 757, 763, 765.

[63] *Official Journal*, 1934, pp. 837, 827, 1594–1609, 1610.

[64] Conference for the Reduction and Limitation of Armaments. *Preliminary Report on the Work of the Conference*, 153–159 (Conf.D.171(1).1936.IX.3).

of territorial changes obtained by force, and a concerted attitude toward breach of engagements.

A report to the Council found that the invasion of Ethiopia by Italian troops was a violation of Article 12 of the Covenant. "The Members of the Council" approved that report on October 7, 1935, and the Assembly, in taking cognizance of it, provided a Coördination Committee in which members of the League could work out measures to fulfil the obligations of Article 16. This committee resolved on October 16 that members of the League "are under a duty to take the necessary steps to enable them to carry out these obligations with all requisite rapidity."[65] The proposals devised for that purpose and effective in November, 1935, dealt with: (1) export of arms, ammunition and implements of war; (2) financial measures, outstanding claims, and clearing agreements; (3) prohibition of importation of Italian goods; (4) embargo on certain exports to Italy; (5) organization of mutual support. The economic experts expected these measures to bring Italy down by October, 1936, and the military experts gave an assurance that the Italian aggression would not be then completed. Italian troops, despite those military guesses, occupied Addis Ababa on May 5. The sanctions were lifted on July 15, 1936. Detailed reports from a majority of states imposing sanctions subsequently showed the proposals had been unexpectedly effective in stopping intercourse,[66] even though they failed to thwart the aggressor, whose *amour propre* was indelibly bruised. In its resolution of July 4, 1936, the Assembly attributed the failure to deficient application of the Covenant and called for strengthening the League's authority by adapting the application of its principles to the lessons of experience. The ensuing statements of governments exhibited a wide variety of views,[67] and the reports to the Special Committee further demonstrated the complexity of the problem.[68] From the reports appeared the alternative theoretical conceptions of a coercive, an intermediate, or a non-coercive League, discussed in considering

[65] Dispute between Ethiopia and Italy. *Proposals and Resolutions of the Coordination Committee . . .*, 1 (*Official Journal*, Spec. Sup. No. 150).

[66] These papers have not been published, but were prepared in response to C.L. 216.1936.II.A.

[67] *Documents Relating to the Question of the Application of the Principles of the Covenant* (*Official Journal*, Spec. Sup. No. 154, pp. 75–89).

[68] *Report of the Special Committee Set up to Study the Application of the Principles of the Covenant*, pp. 41–43, 113–23 (A.7.1938.VII.1).

the question of universality. The ideas of regional grouping and of neutrality from participation in sanctions[69] bobbed up. An attitude appeared that the system was correct, but that the time was unpropitious to operate it or rely on it, and that, besides, it required effort and would irritate marauders. The foreign ministers of seven states[70] at Copenhagen on July 24, 1938, joined in a declaration[71] which asserted that "the system of sanctions has acquired a non-obligatory character." The small states feared that by sanctions they might be "dragged into conflicts between the great powers."[72]

The consensus of the statements of the delegations to the 19th Assembly is fairly reflected in the announcement that "in present circumstances, the United Kingdom Government would interpret the obligations under Article 16 in the following terms":[73]

(1) The circumstances under which international action under Article 16 might be contemplated and the nature of this action could not be determined in advance. Each case must be considered on its own merits. Every State Member had the right to take measures like those provided for in Article 16, but there was no unconditional obligation to take such measures;

(2) A general obligation would exist for each Member in consultation with other States Members of the League to determine whether and to what extent it was possible in a specific case to envisage the measures provided in Article 16;

(3) During the consultation, each State Member would be itself judge of the extent to which its position would permit it to take part in the measures proposed. Each State Member would naturally be influenced by the degree to which other Members were disposed to act;

(4) It should be recalled that recourse to war, whether or not this affects a State Member of the League, was the concern of the League as a whole. States Members of the League could not be indifferent to this question.

Japan declined on September 22, 1938, an invitation of the Council under Article 17 to comply with the obligations devolving upon members of the League for the settlement of disputes. The Council on September 30 consequently found that "the provisions of Article 16 are, under Article 17, par. 3, applicable in present

[69] By formal application, Switzerland was absolved from active obligations under Article 16 by action of the Council, May 14, 1938 (*Official Journal*, 1938, p. 368).

[70] Belgium, Denmark, Finland, Luxemburg, Netherlands, Norway, and Sweden.

[71] *Records of the 19th Session of the Assembly*, Plenary Meetings, 38.

[72] The Norwegian delegate's statement, *idem*, 50.

[73] *Questions relating to Article 16 of the Covenant*, 15(C.444.M.287.1938.VII.2); Sixth Committee, 4th meeting.

conditions, and the members of the League are entitled, not only to act as before on the basis of the said finding, but also to adopt individually the measures provided for in Article 16."[74]

It would appear (1) that Article 16 is in full force; (2) that its operation is at present dependent upon the individual conclusions of governments more than upon findings by the organs of the League on which those governments are represented. This conception advances toward the "intermediate" League of the report on "participation of all states in the League of Nations"[75] in which members, "while not being obliged to use coercion (save perhaps if all were agreed upon it, other than the disputants), would obtain the right to use it as between themselves and other Members in certain specified circumstances. One of the legal effects of giving such a faculty would be that no Member which had violated the Covenant could, as a matter of juridical right, complain of the use of force against it by other Members, or require of these the observance of the rules of neutrality in the dispute involved."

The report on Article 11 of the Covenant to the Special Committee Set up to Study the Application of the Principles of the Covenant[76] pointed out that the unanimity rule which applies to the active mediatorial function of paragraph 1 made precautionary measures before the outbreak of hostilities dependent upon the voluntary coöperation of the disputants. The United Kingdom, in the 19th session of the Assembly, thought that the Council should be able to express opinions or report on facts and take precautionary measures outside the territory of the parties without vote of the parties. A draft resolution to that effect was introduced[77] and

[74] Minutes of the 103d Session of the Council, Minute 4098. For the Japanese retort, see the Foreign Office statement of October 3. The United States made detailed demands on Japan on October 6.

[75] *Report of the Special Committee Set up to Study the Applications of the Principles of the Covenant*, p. 43 (A.7.1938.VII.1). [76] *Ibid.*, p. 99 (A.7.1938.VII.1).

[77] The draft resolution read:

"The Assembly,

"Having regard to the opinions expressed by certain delegations on the unanimity rule laid down in Article 5, paragraph 1, of the Covenant, as applied to paragraph 1 of Article 11;

"Without prejudging any question of principle as to the effect of that rule and without prejudice to the Council's freedom of judgment:

"Expresses the view that, in cases in which a dispute is referred to the Council under paragraph 1 of Article 11, the Council may, with the consent of all its Members other than the parties to the dispute:

"(1) Express an opinion or adopt a report concerning the facts of the dispute;

debated in the Sixth Committee.[78] At the plenary meeting of September 30, the resolution failed of adoption by a vote of 29 to 2, with 11 abstentions. Hungary and Poland cast the adverse votes, both clinging to the unanimity rule. Hungary thought that the equilibrium between the preventive and pacificatory rôle of the Covenant (Articles 11, 12, and 19) and the repressive provisions (Article 16) would be disturbed. Poland thought that the object should be sought by amendment if at all, and regarded the proposal as inexpedient "in view of the evolution . . . within the League . . . which is appreciably reducing its political importance."

When the members of the League were asked in 1936 for proposals to improve the application of the principles of the Covenant, a goodly number laid stress on the universality of the institution.[79] Suggestions took three lines: (1) participation of all states in the League; (2) collaboration between the League and non-member states; and (3) continental or regional organization. Viscount Cranborne (United Kingdom) submitted notable reports on the first two suggestions[80] which were debated extensively at the third session of the Committee of Twenty-eight in January, 1938.[81] In the 19th Assembly, the United Kingdom delegation drew attention to the indication of the two Cranborne reports that, if universal membership in the League appeared remote, the collaboration of non-members became of special importance. The Sixth Committee accepted the suggestion without discussion, and a resolution was adopted by summary procedure on September 30 as follows:[82]

The Assembly,

Having noted the report submitted to it by the Committee of Twenty-eight on the Application of the Principles of the Covenant concerning the collaboration of non-member States in the work of the League;

Recognizing that since the foundation of the League a series of technical and non-political activities have been established of which the scope is in some cases world-wide:

Reaffirms with approval that it has been the consistent policy of the

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"(2) Make recommendations as to the measures to be taken by the Members of the League, other than the parties to the dispute, to safeguard peace."

[78] At the 6th and 7th meetings, September 24, 26, 1938.

[79] *Documents Relating to the Question of the Application of the Principles of the Covenant* (*Official Journal*, Spec. Sup. No. 154, pp. 55–61).

[80] *Report of the Special Committee Set up to Study the Application of the Principles of the Covenant*, pp. 41, 61 (A.7.1938.VII.1).

[81] *Idem*, pp. 8–36. The debate constantly reverted to the problem of Article 16.

[82] A.76.1938.VII.

League to invite the collaboration of non-member States in such work;

Notes with satisfaction that the response to this invitation has steadily increased;

Believes that it is in the universal interest that such collaboration be developed;

Considers that any comment or suggestion for the wider development of such technical and non-political collaboration which non-member States may care to make would be welcomed by the Members of the League represented at the Assembly;

Requests the Secretary-General to transmit this resolution to non-member States.[83]

The eleven states now not members of the League of Nations will be increased to fifteen if the pending notices of intention to withdraw of Chile, Italy, Salvador, and Venezuela mature. The question of collaboration of non-members is thus one of growing moment. The non-members vary from those giving almost complete coöperation in committees, conferences, and informational services to those completely abstaining.[84] No non-members participate in the Assembly or Council meetings except for elections to the Permanent Court of International Justice, the Opium Central Board, and other treaty agencies. Any state having an interest in a question is entitled to be represented and to vote at its decision by the practice under Article 5, paragraph 4, of the Covenant. If this faculty were fully availed of, non-member states would be represented for the great majority of the items on the Assembly and Council agenda. As things stand now, non-members deeply concerned with a question contribute extensively to the formulation of proposals on which the Assembly or Council takes decisions without their voices being heard. The composition of most committees provides for representation of non-member states if their make-up is official; while those composed of experts draw from wherever the most useful or available experts are. Preparatory work on conventions enlists governments according to their interests, and the conferences are equally open to all states concerned. Yet all this is informal and undefined except by practice. There can be no question of the League of Nations machinery being the most efficient

[83] The resolution was communicated to the United States, Saudi Arabia, Brazil, Costa Rica, Iceland, Germany, Guatemala, Honduras, Japan, Liechtenstein, and Nicaragua (Minutes of the 103d Session of the Council, Minute 4097).

[84] On the extent and character of collaboration, see the Cranborne report, and especially the memorandum annexed to it (*Report of the Special Committee Set up to Study the Application of the Principles of the Covenant*, pp. 61–75, A.7.1938.VII. 1).

and best adapted for exploring, formulating, and carrying through to agreement or uniformity the very many common problems of normal life of governments for which a multilateral solution is desired or required.[85]

The differences between the member states of the League and the non-member states lie in their total or partial acceptance of the obligations of the Covenant. Objection to this or that provision, its interpretation or operation, accounts for each of the non-members. No disposition to go it alone embraces more than a segment of multilateral activities. These attitudes, however, tend simultaneously to keep states from utilizing the mechanisms of international coöperation and to foster a non-coöperative policy. How available can the Covenant menu be made *à la carte* for those states to which it is distasteful *table d'hôte?* A protocol can be envisaged whereby non-member states would have the traditional Geneva privileges of coöperation under appropriate conditions.

[85] In its reply of February 2, 1939, to the League circular note of September 30. 1938, the United States Government said (Department of State, *Press Releases*, XX, 153; League document C.77.M.37.1939.VII):

"The growing complexity of the modern world has for many years made increasingly clear the need for intelligent coördination of various activities, and the pooling of information and experience in many fields. The International Postal Union, the International Institute of Agriculture, the International Office of Public Health, and other international organizations, were created to meet this need in specific fields before the creation of the League and continue to carry out their tasks. The League, however, has been responsible for the development of mutual exchange and discussion of ideas and methods to a greater extent and in more fields of humanitarian and scientific endeavor than any other organization in history. The United States Government is keenly aware of the value of this type of general interchange and desires to see it extended.

"Encouraging as has been the progress already made, much remains to be done for the promotion of human welfare in health, social, economic and financial fields. This Government regards each sound step forward in these fields as a step toward the establishment of that national and international order which it believes is essential to real peace.

"The United States Government looks forward to the development and expansion of the League's machinery for dealing with the problems in those fields and to the participation by all nations in active efforts to solve them."

THE BRITISH BUREAUCRACY AND THE ORIGINS OF PARLIAMENTARY POLICY, II*

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V

Thus far, reference has been made, not to the great mass of the civil servants, but only to the higher officials. The work of more than ninety-seven per cent of the members of the service has no significance for this study. The laborers, clerks, writing assistants, and a large majority of the members of the professional class make only incidental contributions to policy, and while their importance is occasionally to be noted, we are not concerned here with a detailed examination of their work. Suffice it to say that the 150,000 who are usually referred to by the term "civil service" possess a certain *esprit* that links the members together. Within this number, however, there are marked divisions: there is the foreign, diplomatic, and consular service, the colonial service, the defense services, and the home service, all with their peculiarities, often of outlook and sometimes of mode of recruitment, salary, or promotion. Outside of this group fall such diverse units as the local government service, the large judicial service, and the employees of such semi-independent agencies as the British Broadcasting Corporation and the Central Electricity Board. Our interest here is centered on the more important members of the professional or specialist class of some 14,000 members, the higher officials of the executive grade numbering between 4,000 and 5,000, and the administrative class with its small but highly important membership of 1,200 to 1,300.

In a discussion of the civil service, it is of importance to state again a fact that is becoming increasingly well known, namely, that a comparison of the place and work of the politician and of the civil servant is not a comparison of the functioning of a layman on the one hand and an expert on the other. While individual members of the administrative class may, and sometimes do, acquire a considerable amount of special departmental knowledge, that is neither the general characteristic of this class nor is it looked upon

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by them as being either essential or generally desirable. In their *Statement* submitted to the Royal Commission on the Civil Service (1929–30), the spokesmen for this class outlined the essential qualities of high administrative-class officers. The performance of their work "calls in all cases for a trained mental equipment of a high order. . . . In some spheres, what is most wanted is judgment, *savoir-faire*, insight, and fair-mindedness; in others, an intellectual equipment capable of ready mastery of complex and abstruse problems in, for instance, taxation or other economic subjects; in others, imagination and constructive ability."[16] A statement of the essential qualities of cabinet members might be so worded, for the high administrative class officials view their work as being "to a very large extent, and sometimes almost wholly, on the plane of policy."[17] "The business of government," they further state, "if it is to be well done, calls for the steady application of long and wide views to complex problems: for the pursuit, as regards each and every subject-matter, of definite lines of action, mutually consistent, conformed to public opinion and capable of being followed continuously while conditions so permit and of being readily adjusted when they do not. Almost any administrative decision may be expected to have consequences which will endure or emerge long after the period of office of the Government by which or under whose authority it is taken. It is the peculiar function of the Civil Service, and the special function of the Administrative Class of that Service, in their day to day work to set these wider and more enduring considerations against the exigencies of the moment, in order that the Parliamentary convenience of today may not become the Parliamentary embarrassment of tomorrow."[18]

The relation of the permanent assistant secretaries or undersecretaries and cabinet ministers is thus not that of doctor and patient. These two groups have much in common; few in either group entered the government service with special training to fit them for their jobs; many of them attended the same public schools and universities, although the future M.P. need not have shown any very outstanding intellectual capacity. The administrative class officer, if he shows promise, will, in most cases, go through a

[16] Royal Commission on the Civil Service (1929–30), *Statement Submitted by the Association of First Division Civil Servants*, p. 6, par. 15. [17] *Ibid.*, p. 8, par. 21.

[18] Royal Commission on the Civil Service (1929–30), *Statement Submitted by the Association of First Division Civil Servants*, p. 5, par. 12.

broad and varied training within the service. Those who reach the pinnacle of a permanent secretaryship will have been employed in several departments, or at least in many lines of work in one great department. Their training is consciously designed to give them a broad view of the affairs of the nation rather than the thorough, though narrow, insight of the technician. One technique that is acquired by both the successful administrative chief and the able parliamentarian is that of politics. Divorced from the open combat itself, high civil servants measure the trends of public opinion and their reflection in Parliament and the cabinet. They cannot guide the minister in matters of policy unless they know him and his position and speak his language.

The high administrative officers are cast in the mould of their class. They know the significance of the statement that Joseph Chamberlain made to a group of civil servants: "I have a shrewd suspicion that you could do without us. But I have an absolute conviction that we could not do without you."[19] As a young member of Parliament of independent mind, arriving at the Commons with a will to accomplish many things in his own way, is shaped by the persuasive influence of that body, so the administrative-class official must be groomed and moulded if he is to reach the heights. Thus, this branch of the service possesses a corporate consciousness. The leaders of the class are as much concerned with the development of their kind and the placing of the right men in the right places as they are with giving advice to ministers. It is the belief of a number of experienced members of Parliament and of other informed observers that the administrative class officers are subjected to the extra-legal control of a small clique or camarilla within the service, although one that is hardly sufficiently institutionalized to be looked upon as a cabinet of the bureaucracy. It is not uncommon for a minister's adviser to be transferred to another department—nominally by the prime minister—against the wishes of the minister concerned. This is done for the good of the service, for the practice enables the higher officials to acquire the view and tendencies of more than a single department.

The position occupied by the administrative-class officer cannot be viewed accurately merely by comparing his place in the government with that of the minister; mention must be made of another

[19] C. W. Boyd (ed.), *Mr. Chamberlain's Speeches* (1914), Vol. 2, p. 7.

class of the service—the professional or specialist class. The specialist has been defined "as a man or woman who has been trained for some other calling or profession than the civil service and who possesses technical or professional qualifications and experience which do not ordinarily form a part of the normal equipment of every public servant."[20] Half a century ago, few specialists were employed by the government; scattered through the home service were surveyors, lawyers, and inspectors, and in the Department of Agriculture and the Local Government Board were a few veterinarians and doctors. Today, in addition to these, almost every line of technical worker is represented in government service, including architects, various types of engineers, valuers, actuaries, accountants, educational and welfare experts, geologists, biologists, and research workers of all kinds. That conflicts should arise between the predominantly lay administrative-class officers who are the immediate advisers of the ministers and these technically trained specialists was inevitable. Nowhere does this conflict appear more clearly than in the *Statements* submitted by each group to the Royal Commission on the Civil Service (1929–30). The administrative-class officers, men standing in no awe of the expert, insisted upon the wisdom of their examining the opinions and recommendations of the experts, and of then presenting their reactions to their respective ministers. The specialists, on the other hand, contended that this roundabout procedure frequently made for distortion of the data upon which governmental policies must depend. "It deprives the supreme departmental authority of direct contact with the technical expert upon whose advice his decision must depend and often results in providing him only with a layman's interpretation of the technical expert's advice."[21]

In spite of the criticism by specialists, the tendency of the last decade has been toward the strengthening of the present policy that denies the specialist direct access to the minister. The exceptions are found in the defense departments and in a few of the less important agencies, such as the Government Actuary's and the Government Chemist's departments. Until ten years ago, the Scottish departments were headed by boards to which the expert

[20] Sir F. L. C. Floud, "The Sphere of the Specialist in Public Administration," *Journal of Public Administration*, Vol. 1, p. 117 (April, 1923).

[21] Royal Commission on the Civil Service (1929–30), *Statement Submitted by the Institute of Professional Civil Servants*, p. 12, par. 25.

had direct access. But since 1928, when three of these boards were abolished, the ministers' immediate contact with their technicians has been through the permanent secretaries, who are administrative-class officers. In some of the newer administrative agencies, for example, those designed to control public utilities, no barrier between management and expert exists. As these agencies are, however, only indefinitely related to departments, and thus are not under political control, they do not constitute an exception to the present trend.

With the increasing importance of the expert in government, this problem of providing the minister with technical knowledge has become more acute. The specialist has little regard for the "general common sense point of view," which, he says, makes for a misconstruction, though generally an innocent one, of the facts. The administrative-class officer counters with illustrations of technicians who have insisted on theoretically sound, but politically highly inexpedient, proposals; and also with illustrations of conflicting opinions among the specialists themselves. Reference of many problems must be to experts, but a question may go to the wrong expert, "and he, being *ex officio* bound to wear his own particular sort of blinkers, resolutely shuts his mind to any considerations that are 'not his job'."[22] The lay administrative official seeks further to strengthen his position by repeating the oft-quoted statement that "the English nation is proverbially suspicious of experts." In his *Ministry of Health*, Sir A. Newsholme, in the course of his enlightening discussion of this problem, quoted from a speech made in the House of Lords during the World War. "It should be an axiom in Government administration," said Lord Sydenham, "that no one should be permitted to have anything to do with any question on which he could not bring special knowledge to bear. That axiom prevailed in all well managed private business. But his own experience in some government matters had been that one had to fight for a necessary improvement through an ascending series of officials, each knowing less than the last, until one reached the deciding authority, who knew nothing at all. This was euphemistically called 'the chain of responsibility'."[23]

Since the policy that denies to the specialist access to the min-

[22] H. F. Carlill, "Administrative Habits of Mind," *Journal of Public Administration*, Vol. 8, p. 128 (April, 1930). [23] P. 91 (1925).

ister under normal conditions has been adopted (with the exceptions mentioned), what is the responsibility of the administrators, and through them of the ministers, toward the specialists? The administrator may fail to see the significance of the technician's counsel, or he may be prejudiced against it and thus may neglect to present the technician's point of view altogether, or may present it in a distorted fashion. As mistakes have been made because the specialist had not been consulted, he has the right to demand that he be consulted. This is generally done. There is force in his contention that he should be allowed access to the minister. When his recommendations are refused, little recourse is left to him. As a final step, he may resign his position, as did Sir Thomas Legge, protesting against the refusal of the Government to adopt his recommendations with regard to the use of white-lead paint in factories.

The specialist can see no validity in the proposition that the work of administrators is superior to that of experts. The administrative-class officers have contended that it is not a question of superiority but simply one of an intelligent functional division of labor. It is a question of breadth of view, which their training in the service is designed to develop. They somewhat grudgingly admit that there may be individuals in the professional service possessing qualities essential for administrative work, and they have now embarked on what seems to them an experiment of doubtful value, whereby the door has been slightly opened so as to permit the appointment of specialists to high administrative positions. This may make for a stronger sense of solidarity within the departmental civil service, for in spite of unnumbered grades, divisions, and informal groupings this service is a unit; and in the background of the minds of most members is a recognition of the view expressed by a former parliamentarian that there are really only two types of people, civil servants and everyone else.

The civil service is believed by some to possess a point of view that is predominantly academic, and to be a class living in a world by itself. The generalization is too broad to be true; the service is too complex to be characterized accurately in a sentence. There can be nothing particularly academic in the point of view of a postoffice clerk or of a work's foreman. The all-important Treasury officials are pronounced realists. The criticism is probably directed toward specialists and those administrators who are primarily re-

sponsible for initiating reforms. But even here there is a constant touch with a world of "practical affairs."

As has been indicated, major social reforms are originated, or are given their special character, by the civil service. But this is not a service that works behind barred doors in Whitehall. There is, on the contrary, an old and vital contact between the Treasury and the City. Even in the period 1906–14, there were contacts between the civil service and those industries that were being affected by reforms, partly through the agency of advisory committees. While the departmental or interdepartmental advisory committee is not the most significant agency affecting policy formation, its real importance has seldom been properly stressed. Much more attention has been given to the royal commissions and parliamentary committees that work in public. But these less well known advisory agencies, regardless of how much or how little formal power is given them, play too important a part to be passed over with only a word.

Although an advisory committee may serve merely as a device to acquaint an economic group with an unpleasant change in its affairs that the government is about to introduce, the more significant use of these committees is to bring together specialists from within and without the government service, so that both groups may focus their attention upon a single problem. In more limited administrative matters, or in the sketching of a plan as yet only vaguely envisaged, the Government may wish to obtain guidance from informed members of the interests to be affected, and, therefore, experts from outside the government are customarily invited to sit as members of such committees. The formal invitation comes from the minister, but the department commonly inquires of the industry or other interest who will be acceptable. An invitation to serve on such a committee is considered an honor, for there is prestige in "advising Whitehall." The committee serves at the pleasure of the minister, and if it produces a report, the minister may or may not make it public. At times, such reports are published in order to get a wider reaction to proposed changes. It is also an advantage to the minister, when introducing a proposal in Parliament, to state that the subject has been examined and has received the support of an expert advisory committee. At times, these committees also serve as buffers, similar to some royal commissions. A minister who has been lax in his work in a particular

field, for example, may find it convenient to appoint a committee to consider a particular matter, and is thus able further to postpone the day when action must be taken.

These advisory committees are numerous. In the summer of 1936, there were more than twenty in existence in the Ministry of Health, a few of them acting jointly with other departments. Among other things, they were concerned with town and county planning, nutrition, housing, medical distribution, river pollution, flats for the working classes, and local government and public health law consolidation. While it would be difficult to obtain an accurate list of these agencies, since their character, functions, and notice of them given to the public vary greatly, they are found to predominate in the home departments. Even in the Colonial Office, they are to be found in the Oversea Settlement Committee of 1918 and in its recent successors—the Oversea Settlement Board and the Central Committee on Oversea Settlement.

The evidence indicates that these advisory agencies have exerted considerable influence, although its exact extent is difficult to appraise. Civil servants who have long been associated with advisory committees agree respecting their importance. One particularly able member of the service (recently retired) commented in a letter to the writer: "I do not think that the Health Insurance Act could have been made to work in 1912 had it not been for the use which we made of our group of Advisory Councils . . . . to procure their [the provisions of the act] general acceptance." During the World War, Parliament practically abdicated many of its functions to committees of this type. In his study, *The Board of Trade*, H. L. Smith wrote that strong expert committees were set up in the Board of Trade in 1894, 1905, and 1925. "The results of the labors of these committees have been the Amending Acts of 1900 and 1907, the Consolidation Act of 1908, and the proposed amending bill now before the House of Commons."[24] In Philip Snowden's *Autobiography*, mention is made of a study, by experts in various home departments, of the subject of widows' pensions while Labor was in office. "I may here anticipate events," he stated, "by mentioning that the following year [1925] our successors brought forward a contributory scheme for Widows' Pensions, which was based upon the Report of the Enquiry to which I have referred."[25]

[24] P. 168 (1928). [25] Vol. 2, p. 637 (1934).

A minister will more readily accept a modification of a proposed reform that has been suggested by outside experts acting through an advisory body than by an amendment proposed on the floor of the House by one of his own supporters.

At the head of the civil service stands the Permanent Secretary of the Treasury. At some time during the last seventy-five years, probably in 1867, he acquired the title, Head of His Majesty's Civil Service, a title that many consider both annoying and anomalous. Through the Treasury, this officer exercises wide control over the civil service in matters relating to appointments, salaries, and discipline. To the development of this control is due in part that sense of unity, which has displaced a departmental attitude, that pervades the civil service as a whole.

This "Treasury control," as it has come to be known, is only incidentally concerned with the organization of the civil service. Not only is it effective in managing the service, but the Treasury exercises a positive control, sometimes subtle, and always present, in the great home departments. The Treasury must find the means for carrying on the public services, except those that are self-supporting; consequently, it is consulted with regard to all new expenditures. As departmental demands for funds are numerous and insistent, there develops a positive Treasury attitude favoring economy. When it is borne in mind that the Treasury is the head of the civil service and exercises final control in matters related to the organization of the departments, assigning and reassigning the civil servants, this attitude becomes significant. Today, the Treasury recruits its members exclusively from the other departments, drawing to itself likely young men, training them, and assigning many of them back to the spending departments. The effect of this training is to present to some of the men who later will advise the ministers the seriousness of the problem of finding money for public services—a training that tends to dull enthusiasm for new reforms. Ministers might find in their subordinates a greater enthusiasm for reform if this apprenticeship were served in some large socialized undertaking "where large capital expenditure is freely embarked upon without a latent sense of sin."

Treasury control is continuous, not spasmodic. So powerful is the influence of this office that departments do not wait until their plans are completely formulated before seeking Treasury approval. The possibility that an ambitious and carefully worked out scheme

may be vetoed by men who are reluctant to authorize expenditure leads officials who are projecting new or extended activities to keep in close touch with the Treasury. If this is done, and the plan becomes a definite proposal, there is some possibility of its realization. The Treasury is thus enabled to keep a firm hand upon all the home departments, on the one hand controlling personnel, on the other, finance. Although frequently condemned, it is difficult to imagine any other equally effective form of control that could be maintained. Because of it, the atmosphere in which reforms are planned —despite the ideas of the dominant group in Parliament—is one of hostility, or, at best, the attitude of the office is negative and unsympathetic; "for the business of the Treasury is not the development of administration as an art, but to watch economy with scrupulous rigour."[26] In more technical fields, particularly in the defense departments, Treasury control is less effective. The Treasury expresses a greater readiness to approve new expenditures for aëroplanes and guns than for schools.

VI

The loyalty of the permanent secretary to his political chief, with occasional exceptions in the defense departments, is a widely recognized quality. A lack of complete confidence may develop between the minister and the civil servant, as was true with Sir Arthur Nicholson in the Foreign Office when Sir Edward Grey was Foreign Secretary, but this is not common. The civil servants have biases which at times result in a lack of enthusiasm in the carrying out of the ministerial will. But a minister who is willing to fight his service chiefs will gain their coöperation when once he has asserted his authority. The loyalty of the civil service is not of a servile quality. A permanent assistant secretary is not a mere office boy—as inexperienced ministers may on occasion treat him—but an official in whose hands rests the major responsibility of deciding what matters shall come to the attention of the minister, and an official who must also try to guide the minister. As a permanent official, he realizes that his chief's tenure is unstable and views his own primary responsibility as one to the nation; therefore, unless he is over-cautious and unwilling to assert himself, he will strive to prevent the minister from acting, as it seems to

[26] H. J. Laski, "The Tomlin Report on the Civil Service," *Political Quarterly*, Vol. 2, p. 514 (Oct.–Dec., 1931).

him, unwisely. Conceding the loyalty of the administrative class to the government and to the minister is not, however, enough, according to the views of some students of government.[27] With regard to the great social services—housing, unemployment, education, pensions, etc.—can, they ask, a willingness to serve the state offset an unconscious prejudice against the development and, in many cases, the extension of those services? It is this class that must plan the attack. A civil servant's loyalty may also be unconsciously divided by considerations other than those of an economic character, e.g., in foreign affairs, where the influence of the service has long been marked. On several occasions it has been suggested that the opinions of influential Roman Catholic members of the Foreign Office staff have exerted no little weight in European diplomacy involving Britain's relations with Catholic nations on the one hand and with non-Catholic states on the other.

The position of the civil servant still requires that he remain largely anonymous. He tends to preserve the fiction that he acts merely to carry out the dictates of the politician. Thus we seldom find one retiring from the service to write informing memoirs, or publicly denying accusations that occasionally are aimed at him, or questioning the boastful assertions of former ministers. But there are exceptions. Sir Henry Craik was a member of the civil service for thirty-five years, and for twenty years he was the service head of the Scottish Department of Education. On retiring from the service, he was elected to the House of Commons, and while there, in 1926, he moved a resolution that read: "That, in the opinion of this House, the Civil Service has merited the gratitude of the nation but that its continued efficiency depends upon the control of that Service by His Majesty's Ministers responsible to this House, upon the strict maintenance of its constitutional position as a subordinate branch of administration, and upon the continuance of those traditions by which it has been animated in the past."[28] Among other things, Sir Henry was annoyed by the fact that the existing organization of the civil service has a head in the Permanent Under-Secretary of the Treasury, and also because members of the service were consciously striving to lose their anonymous status.

While the constitutional principle that the individual civil ser-

[27] Cf. H. M. Stout, *Public Service in Great Britain* (1938), p. 137.
[28] Hansard, April 14, 1926, Col. 289.

vant remains anonymous at times irks a competent official who sees his well laid plans go awry because of the clumsy handling of his proposals on the floor of Parliament, the rule is, nevertheless, one that gives him protection and makes his position more secure. If he gains but little popular acclaim for achievement, it is in most cases the minister and not the civil servant who suffers for the official's blunders. The minister must accept complete responsibility for the affairs of his department, even for those innumerable departmental decisions in which he had no part and of which he often had no knowledge until an outcry was raised. In spite of this fact, a minister who defends himself in such an attack by pleading the responsibility of his permanent officials and his own ignorance is subject to reprimand, for the parliamentary system does not yet recognize any responsibility other than that of the minister.

Around this principle a growing conflict is being waged. Constitutional theory changes slowly, tardily following constitutional practice. At this time, there is no sure foundation in fact for administrative-class responsibility; however, there is a growing recognition of the dominant place of certain individuals in this class; and in recent years these men have become more widely known. The names of Sir M. P. A. Hanke (recently retired), Sir H. J. Wilson, Sir Robert Vansittart, and Sir Warren Fisher have often appeared in the press, while in an earlier period, the public knew less of the work of Lord Welby, Sir Edward Hamilton, Sir George Murray, Sir A. Macdonald, and more recently, of Sir Eyre Crowe, Sir Arthur Hirtzel, and Sir John Anderson.[29]

VII

Despite the influence of ministers, of the Treasury, of other administrators, and of specialists, the legal power to govern is vested in Parliament. The fact that Parliament appears to be lax in exercising this power in a positive sense does not of itself mean that it has abdicated its functions to ministers and civil servants. To a degree, it is flattering to the administration that seldom does its work reach such a bad pass that the giant is compelled to rise and strike.

[29] "Governorships and other appointments, such as were formerly reserved for noblemen and the like, have been more frequently given of late to civil servants." Sir S. Leathes, "The Old Civil Service," *Fifty Years: 1882–1932*, p. 159 (1932).

Within the House of Commons are found representatives of all the major and of many of the minor pressure groups, including even the interests of some foreign nations. Ministers and civil servants act with the knowledge that these groups are capable of arousing a dormant public opinion. When, however, they disregard the interests and feelings of powerful groups, the size of the Government's majority is not always the deciding factor. The early months of 1938 witnessed a top-heavy Government compelled to modify its policy on a number of occasions, although the Government, had it cared to risk its political future, could have rolled up impressive majorities in division. Positive, and even angered, opposition, coming at times from both sides of the House, is not in itself sufficient to bring the leaders into line, as was shown in the fight in 1936 over the issue of raising the school-leaving age. But when it becomes obvious that the country is aroused, the Government will often give way. A dramatic example of this appeared in the abandonment of the Hoare-Laval proposal in 1935. Even more interesting was the attack, largely successful, upon the Incitement to Disaffection Bill introduced in the preceding year. At this time, the Government had a safe and submissive majority; on no division did it suffer defeat, and it could have forced the original bill through the House. But in the face of an intense popular outcry, it chose to yield ground, and amendment after amendment was accepted. The whole episode came to the Government as a surprise, the bill having been accepted by the cabinet after the briefest consideration; nothing had been done to prepare the country for the shock. The services that had framed these two proposals had misgauged the attitude of the people. As there were no formal lobbies organized to fight such measures, ministers were unable to visualize in advance what actually happened. Pressure groups were quickly organized in both cases, which, on the surface, ignored party lines. The campaign for defeat of the so-called sedition bill, while conducted upon a somewhat higher plane, was similar to the campaign in this country that successfully blocked the Administration's court reform bill of 1937.

There exist in London—contrary to what one often hears around Westminster—a considerable number of lobbies, many of which have headquarters in the neighborhood of Parliament. It is not a part of this paper to examine them in detail, but their relation to the study must be mentioned. There are, among others,

organizations of educators and other professional groups, of labor and industry, of the military, of local government officials, of brewers, of gambling interests, and of churches. Both the political and permanent authors of governmental policy must at least consider these groups, and may either discount them or, when it seems necessary, attempt to mollify them. It is indicative of the influence of the civil service that lobbies do not confine their activities to the Commons. With the official class, their influence is evident in the administration of home affairs. The activities of the Central Electricity Board, for example, frequently involve coöperation with one or another of the home departments; and it is here that the Board feels the strength of the influential gas and coke people. Mrs. Sidney Webb has stated that "after forty years' experience of trying to get this or that legislative proposal or administrative reform adopted by the Party in power, if I have easy access to his permanent officials, I never trouble the Cabinet Minister, for the sufficient reason that I assume that he will be ignorant of the ins and outs of the subject, and that he will not have his hands on the working machine."[30]

VIII

The result of the developments noted above is to give us, first, a nation subject in law to a representative Parliament, but in fact largely controlled by an executive that has no general legal power to govern; second, an executive that on the whole acts cautiously and quietly, drawing on popularly unknown non-governmental agencies for aid and assistance. This conflict between law and practice, coupled with the extensive delegation of rule-making power to the executive, has led to numerous complaints which, naturally, have come primarily from lawyers. And it has to be admitted that the complaints, and even such a tirade as that of the Lord Chief Justice, rest upon some substantial foundation in fact. A considerable portion of this factual basis has been outlined above. A contributing cause of the present paradox may be found in the organization and structure of Parliament. But even if defects in parliamentary control were to be remedied, the picture would not be greatly changed. If party dictatorship could be broken, if Parliament would avoid devoting long hours to debating such

[30] "A Reform Bill for 1932," *Political Quarterly*, Vol. 2, pp. 5–6 (Jan.-March, 1931).

popular topics as the fate of aged horses exported to France and the kind of trees that should be planted in Kensington Gardens, if Parliament could amend its procedure and thereby reduce the congestion of business, even then the civil service, administrative and professional, would by the very nature and complexity of modern government, be compelled to play a dominant rôle. The difference between the totalitarian and the democratic state is not concerned primarily with the functions, or even the power, of the civil service, but rather is one of responsibility; for whether the state be fascist, communist, or democratic, the relative position of layman and specialist is of utmost importance; the problems of dictator and expert are as real, though different, as those of Parliament and expert.

In the mass of the able civil servants is found the technical ability the nation needs. The knowledge of trained minds is essential to the effectuation of a policy, and in many cases to its formulation. The work of the public administrator is continuous; he knows from experience the strength and weakness of the governmental machine and is in a position to propose reform. The *expertise* of this special class is not limited to things medical or statistical, as in the old German civil service, but includes things political; for while Parliament's power lasts, a power that a slip or false move may stir to action, the civil servant must act with that power in mind if he is to remain a part of the system.

Thus the work of the British bureaucracy does not present to the nation a force of disquieting and ominous proportions. The functions that it performs are essential, and its power, with a few exceptions, is in no sense irregular. Any governmental institution —the judiciary or the legislature, as well as the executive—presents a serious threat to democracy if it is irresponsible. The traditions of the civil service, the character of its members, and their realization that, in last analysis, their work is subject to popular control and that they may be personally penalized when they pass beyond the bounds of their present constitutional position, have regularized the power of this now vital branch of the government.

CONSTITUTIONAL LAW IN 1937–1938

THE CONSTITUTIONAL DECISIONS OF THE SUPREME COURT OF THE UNITED STATES IN THE OCTOBER TERM, 1937

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During the 1937 term, the Supreme Court underwent the first changes in its personnel since Mr. Justice Cardozo succeeded Mr. Justice Holmes in March, 1932. On June 1, 1937, Mr. Justice Van Devanter retired and was succeeded at the opening of the new term in October by Mr. Justice Black. On January 18, 1938, Mr. Justice Sutherland retired and was succeeded on January 31 by Mr. Justice Reed. During a substantial part of the term, Mr. Justice Cardozo was absent on account of illness, and his death occurred July 9, 1938. Mr. Justice Black, whose appointment had attracted much public comment, threw himself into the work of the Court with unusual vigor. During the term, he wrote the opinion of the Court in fifteen cases. He dissented in fourteen cases, in nine of which he wrote dissenting opinions. He concurred without substantial opinion in eleven cases, and wrote a concurring opinion in one other case. Mr. Justice Reed participated less actively, first because of the lateness of his appointment, and second because his prior service as Solicitor-General of the United States disqualified him from sitting in a considerable number of cases. These changes in the membership of the Court have altered the almost even division on the bench between the so-called conservatives and the so-called liberals. Without attempting to speculate as to the course of future decisions, it is significant that the irreconcilably conservative block of justices, consisting of Justices Van Devanter, Sutherland, McReynolds, and Butler, has been broken up.

A. QUESTIONS OF NATIONAL POWER

I. LEGISLATIVE POWER

(1) *The Commerce Power.* No startling decisions dealing with the commerce power were handed down during the present term. Of substantial importance, however, was the Court's decision in Electric Bond & Share Co. v. Securities and Exchange Commission[1] upholding the provisions of the Public Utility Holding Company Act of 1935 requiring the registration with the Commission of holding companies and prohibiting the use of the mails and interstate commerce to those who failed to register. The plaintiff in error and certain other holding companies refused to register. The demand for registration was embodied in an order

[1] 303 U.S. 419, 1938.

by the Commission under which the companies who complied reserved all rights to question any other sections of the holding company act. The companies alleged that a number of the provisions of the act, notably the famous "death sentence" provisions, were unconstitutional, that these sections were not separable from the rest of the act, and that the registration provision had no other purpose than to bring holding companies within the reach of these unconstitutional regulatory sections. In a unanimous opinion, Chief Justice Hughes held that the defendant companies were engaged in interstate commerce, since they were operating in thirty-two states and their contracts of service involved continued use of the mails and of the instrumentalities of interstate commerce. The registration sections of the act are separable from the other sections. Congress had inserted a separability clause which "reverses the presumption of inseparability." There are no practical reasons why the registration sections should not be treated as independent. They require information which may be of value in various ways. Congress may well have desired to secure this information through registration, even if it were not seeking to impose any regulations upon the companies. An attempt was made to urge upon the Court the doctrine of "dual federalism" by contending that the privileges of the mails and of interstate commerce are denied by the statute in order to effect regulations beyond the power of Congress. The Chief Justice rejected this contention and declared that "while Congress may not exercise its control over the mails to enforce a requirement outside its constitutional provisions, when Congress lays down a valid regulation pertinent to the use of the mails, it may withdraw the privilege of that use from those who disobey." Finally, the Court refused to permit the companies to challenge the constitutionality of the entire holding company act under the procedure provided by the Federal Declaratory Judgment Act. To allow this would bring before the Court "a variety of hypothetical controversies which may never become real."

That Congress may bar from interstate commerce food products which are adulterated or injurious to the public health is restated in United States v. Carolene Products Company.[2] The defendant had shipped a product called "Milnut," made of condensed skimmed milk combined with cocoanut oil, in violation of the Filled Milk Act of 1923 which forbids the shipment in interstate commerce of skimmed milk compounded to resemble milk or cream. Speaking for the Court, Mr. Justice Stone refers to earlier cases in which Congress had been upheld in excluding from interstate commerce articles which it conceived to be injurious to public health, welfare, or morals. The act in question therefore falls well within the commerce power. It does not deny due process, since no per-

[2] 304 U.S. 144, 1938.

son has a constitutional right to sell a product both dangerous to the public health because of its diminished nutritive value and designed to perpetrate fraud on the public. The act is not invalid merely because Congress might have prevented the threatened evil by requiring the adequate labelling of these products. Congress was entitled to choose which method of dealing with the problem would be most satisfactory.

A group of cases came before the Court involving the application of the National Labor Relations Act to different situations. It is natural that this should occur, since, as has previously been pointed out, the major decisions upholding the Act rested in each case upon a finding that those brought within its scope were actually engaged in interstate commerce or that interstate commerce was directly affected by the activities involved.[3] In Santa Cruz Fruit Packing Company v. N. L. R. B.,[4] the Board found that the company had engaged in unfair trade practices by interfering with its employees in forming and joining a labor organization. The Board ordered the cessation of these activities and the reinstatement of the discharged workmen, with back pay. The company is engaged in canning and packing fruits and vegetables, and thirty-nine per cent of its product is shipped in interstate commerce. These interstate shipments are made f.o.b. San Francisco, and the company contended that the labor practices complained of occurred in local commerce and were beyond the jurisdiction of the Board. The Court, speaking through Chief Justice Hughes, upheld the Board's order. The company is engaged in interstate commerce. The fact that interstate shipments are made f.o.b. does not make them any the less interstate commerce transactions. A large part of all interstate shipments are handled on that basis. The method of payment does not affect the jurisdiction of Congress. There is a close relationship between the labor practices covered by the Board's order and interstate commerce.

N. L. R. B. v. Mackay Radio & Telegraph Company[5] involves no constitutional point, but defines a particular unfair labor practice. The company is engaged in interstate communication in California. A local branch of a national union entered into agreements with the company relating to labor conditions. The company postponed the execution of those agreements until the members of the union struck to enforce compliance. The company thereupon brought strike-breakers from outside. It became apparent that the strike would be unsuccessful, and a number of the strikers desired to return to work. Many of these were reëmployed, but the five who had been the most active in calling and managing the strike were told that their places were filled and that they would have to wait for vacancies. The union thereupon invoked the jurisdiction of

[3] See this REVIEW, Vol. 32, p. 283.
[4] 303 U.S. 453, 1938. [5] 304 U.S. 333, 1938.

the N. L. R. B., alleging an unfair labor practice in the discrimination against these five men. The Board found as a fact that the five men had been discriminated against because of their labor union activity and ordered their reinstatement. The Court upheld the Board's order. Speaking through Mr. Justice Roberts, it held that the strike was in connection with a labor dispute, that the strikers remained employees within the meaning of the Act even though they had struck in order to enforce their agreement with the company, and that the Board had jurisdiction since it was an unfair labor practice to discriminate against those most active in the affairs of the union. There was no denial of due process in the procedure of the Board. After hearings had been held by the trial examiner on the original complaint, the Board modified this complaint. The company was seasonably notified of the amended complaint and had full opportunity to prepare its defense, but was not allowed to see and to file exceptions to the intermediate report founded upon the amended complaint. However, all the issues and contentions were defined clearly, and no practical disadvantage resulted to the company from not seeing the report. The Fifth Amendment does not guarantee a particular procedure, but merely protects substantial rights.

In N. L. R. B. v. Pennsylvania Greyhound Lines,[6] the Board found the respondent, an interstate bus company, to be engaging in an unfair labor practice by donating financial support to a company union. The Board ordered the company to desist from this practice, to withdraw recognition from the company union as a bargaining agent of the workers, and to post appropriate notice to its employees that it had done so. Did the Board have authority to order the company to withdraw recognition from the company union? The Court, speaking through Mr. Justice Stone, upheld the Board's order. The findings of the Board justified the action taken, and the order gives effect to the general policy of the National Labor Relations Act. It therefore falls within the scope of its provisions.[7]

(2) *National Taxation—Taxation of State Agencies.* The most important group of decisions during the present term related to the taxation of government instrumentalities. Viewed as a whole, they represent a definite shift in the Court's theory of immunity from intergovernmental taxation, and they have encouraged the Administration and Congressional leaders to hope that the Court may go even farther in the direction of breaking down this century-old doctrine. The most conspicuous of these cases is Helvering v. Gerhardt,[8] which involved the right of the federal government to impose an income tax upon the salaries paid to a con-

[6] 303 U.S. 261, 1938.

[7] A similar result was reached on similar facts in N.L.R.B. v. Pacific Greyhound Lines, 303 U.S. 272, 1938.

[8] 304 U.S. 405, 1938.

struction engineer and to two assistant managers employed by the Port of New York Authority. The Port of New York Authority is a corporation created by an interstate compact entered into by New York and New Jersey, with the consent of Congress, in 1921. It built and operates the George Washington Bridge, the Holland Tunnel, the Lincoln Tunnel, and various other interstate transportation facilities in and around Greater New York. The defendants claimed immunity from federal taxation on the ground of their public employment.

The opinion of Mr. Justice Stone holding these salaries taxable merits careful analysis. It opens with an historical summary of the doctrine of immunity from intergovernmental taxation. This doctrine began with McCulloch v. Maryland,[9] in which a state was denied power to tax the National Bank. In this case, Marshall emphasized the distinction between the power of a state to tax national banks and that of the national government to tax state instrumentalities. In the one case, the entire nation, through its representative, is imposing taxes upon itself, while in the other case a single state is imposing a tax upon the nation. The case could have been decided upon the ground that Maryland had levied a discriminatory tax on the national bank. Later decisions, however, have held that such a state tax is bad even when not discriminatory.[10] The immunity of state instrumentalities from federal taxation was first established in Collector v. Day,[11] which held that the federal government could not validly tax a state judge upon his judicial salary. This case rested on the theory that it was necessary to protect the states from the destruction through federal taxation of those governmental functions which they were exercising when the Constitution was adopted and which were necessary to their continued existence. The case should be narrowly limited to this rule. It is important to restrict the range of state immunity from federal taxation to the narrowest possible limits for two reasons. First, all of the people have created the national government and are represented in Congress, so that when they exercise their taxing power, they are taxing themselves. Second, any limitation upon the federal power of taxation is at the expense of the sovereign power of the nation to tax. Accordingly, when it is restricted beyond what is vitally necessary for the protection of a state, a burden is placed upon the national government with no compensating advantage to the state and with benefit only to a privileged class of taxpayers. With the steadily increasing range of state activities, it becomes additionally important to apply this rule strictly.

While admitting that the Court's decisions in this important field have

[9] 4 Wheaton 316, 1819.

[10] Weston v. City of Charleston, 2 Peters 449, 1829; Dobbins v. Erie County, 16 Peters 435, 1842. [11] 11 Wallace 113, 1871.

not been entirely consistent, Mr. Justice Stone finds that they have followed two guiding principles. First, the immunity of a state from federal taxation has depended upon the nature of the function being performed by the state or on its behalf. The immunity has not been extended to activities not necessary to the preservation of the state government. This doctrine was established in 1905 in South Carolina v. United States,[12] and has been recently reaffirmed in important decisions.[13] Second, where a tax is laid on an individual and affects the state only when it can be passed along by the taxpayer, exemption from taxation is not allowed "when the burden on the state is so speculative and uncertain that if allowed it would restrict the federal taxing power without affording any corresponding tangible protection to the state government." This doctrine was applied in Metcalf v. Mitchell[14] and Willcutts v. Bunn.[15]

Mr. Justice Stone proceeds to apply these principles to the salaries here involved. The tax is on the net income of these employees "derived from their employment in commercial occupations not shown to be different in their methods or their duties from similar employment in private industry." A non-discriminatory tax on these incomes cannot possibly prevent the performance of the functions in which New York and New Jersey are jointly engaged, or obstruct those functions more than private businesses are obstructed by our taxing system. The mere fact that the expenses of state government might be lessened if all persons who have any dealings with the state were tax exempt is not sufficient to give them immunity from taxation. That immunity must be justified on the ground that it is necessary to protect the continued existence of the state, and for that purpose it is not necessary to give to the state a competitive advantage over private persons in carrying on the operations of its government. Extra cost borne by the state as a result of the tax is "but the normal incident of the organization within the same territory of two governments, each possessed of the taxing power." The Supreme Court has never decided whether the Constitution gives immunity to state employees who perform "at the expense of the state services of the character ordinarily carried on by private citizens." This point was not involved in Metcalf v. Mitchell,[16] since in that case the tax fell upon an independent contractor and not upon a state employee.

In the case of Brush v. Commissioner of Internal Revenue,[17] decided in 1937, and involving the immunity from federal income taxation of an

[12] 199 U.S. 437, 1905.

[13] Ohio v. Helvering, 292 U.S. 360, 1934 (see this REVIEW, Vol. 29, p. 36); Helvering v. Powers, 293 U.S. 214, 1934 (see this REVIEW, Vol. 30, p. 70).

[14] 269 U.S. 514, 1926. See this REVIEW, Vol. 21, p. 74.

[15] 282 U.S. 216, 1931. See this REVIEW, Vol. 26, p. 259.

[16] *Supra*, note 14.

[17] 300 U.S. 352, 1937. See this REVIEW, Vol. 32, p. 288.

engineer of the New York City water department, the decision turned exclusively upon the application to Brush of the Treasury regulation exempting from federal tax "state officers and employees" for "service rendered in connection with the exercise of an essential governmental function of the state." The government argued the entire case on the point that Brush was not performing a function which brought him within this rule; "no contention was made by it [the government] or considered or decided by the Court that the burden of the tax on the state was so indirect or conjectural as to be but an incident of the coëxistence of the two governments, and therefore not within the constitutional immunity. If determination of that point was implicit in the decision, it must be limited by what is now decided."

Since the Brush case was decided, the Treasury regulations have been so modified as to exempt from federal taxation only such compensation from the state as is "immune from taxation under the Constitution of the United States." This defines present immunity from federal taxation in terms of what the Constitution requires and nothing more. Mr. Justice Stone proceeds therefore to apply this constitutional rule. He points out that there may be state agencies of such a character and so intimately associated with the indispensable functions of state government "that any taxation . . . would threaten such interference with the functions of government itself as to be considered beyond the reach of the federal taxing power." If this is the case with respect to the salary of a judicial officer as in Collector v. Day,[18] that is not the case presented here. He passes no judgment upon whether the Port of New York Authority is directly subject to federal taxation upon its earnings or operations, and by so doing he rules out the whole question of whether the Authority is engaging in a governmental function or a proprietary or business function. He concludes that the present tax does not obstruct any function essential to the continued existence of state government. "So much of the burden of the tax laid upon respondent's income as may reach the state is but a necessary incident to the coëxistence within the same organized government of the two taxing sovereigns, and hence is a burden the existence of which the Constitution presupposes. The immunity, if allowed, would impose to an inadmissible extent a restriction upon the taxing power which the Constitution has granted to the Federal government."

Mr. Justice Black presented a concurring opinion reaching the Court's result by a very different route. He urged a complete reëxamination of the whole problem of intergovernmental taxation. The law has so developed as to make it necessary to decide by the rule of judicial inclusion and exclusion the important concrete problems of tax immunity. The immunity turns on the meaning of the term "essential governmental function," a

[18] *Supra*, note 11.

point on which opinions will differ. Any discrimination amongst those forced to pay federal income taxes is unjust. Uniform taxation is the object of every just government, and the words of the Sixteenth Amendment conferring upon Congress the right to tax incomes "from whatever source derived" are fully adequate to support the taxation of all incomes now held to be exempt.

Mr. Justice Butler, with Mr. Justice McReynolds, dissented. Reviewing the major cases dealing with intergovernmental taxation, he pointed out that the Court is definitely shifting its ground and that a century of precedents are being overruled.

There can be no doubt that the Gerhardt case represents an important limitation of the previous field of tax immunity. The Court's theory up to now has been roughly as follows: First, when a state government goes into business, it gives up any immunity from federal taxation upon that business and upon the salaries of the officers and employees engaged in it. Secondly, private individuals who have business relations with the state can claim immunity from federal taxation only by showing that to tax them is to impose a direct and substantial burden upon the state. Third, when a state is carrying on a function which is "governmental" as contrasted with "business or proprietary," that function and the salaries of officers and employees engaged in carrying it out, have been regarded as immune from federal taxation regardless of any showing of actual burden. The theory has been that any tax, however small, would in this situation be a burden. Now by declining to base its decision in the Gerhardt case on the nature of the functions performed by the Port Authority, the Court establishes a new doctrine, that the immunity from federal tax of any officer of the state, regardless of the nature of his duties, will depend upon whether the imposition of the tax will, as a practical matter, preclude or obstruct the performance of functions necessary to the preservation of the state. There may be state officials who will be immune from taxation under this rule, and the Court suggests that state judges, protected by the decision of Collector v. Day, may be in this category. But it seems very clear that a great many others, as, for example, professors in state universities, will find it very hard to show that a federal tax upon their salaries will impose a direct and substantial burden upon the state.

In line with the doctrine in the Gerhardt case is the case of Helvering v. Mountain Producers Corporation.[19] The state of Wyoming leased certain school lands to a gas and oil corporation owned by the respondent. Under the lease, the state received a substantial share of the royalties and the lessees received the balance. Can the federal government impose an income tax upon the income of the corporation which is derived from the lease? Speaking through Chief Justice Hughes, the Court held that the

[19] 303 U.S. 376, 1938.

incomes were fully taxable. "Immunity from taxation cannot be supported by merely theoretical conceptions of interference with the functions of government. Regard must be had to substance and direct effects." Where one operating under a government contract is merely being taxed on his profits in the same way that others engaged in the same business are taxed, he cannot show that the effect of the tax on the government "is other than indirect and remote." The result reached here is in conflict with two previous decisions of the Court. Burnet v. Coronado Oil & Gas Company[20] held that the income derived by a private corporation from an Oklahoma lease of similar school lands could not be taxed by the federal government. Gillespie v. Oklahoma[21] held that the state could not tax income derived from the lease of restricted Indian lands, on the theory that the Indian owners were wards of the United States. The Court in the present case accordingly declares that the Gillespie and Burnet cases "are out of harmony with correct principle and accordingly they should be, and they now are, overruled."

Allen v. Regents of University System[22] held valid the imposition of a federal tax of ten per cent upon admissions to athletic games conducted by a state university. The regents of the University of Georgia had contended that this tax was invalid, since football games and other athletic events were held by the University as an integral part of the general educational program comprising an essential governmental function of the state. The facts showed that the income from football games was large enough to give substantial aid to the University's entire program of physical education. Mr. Justice Roberts, speaking for the Court, admitted that the state, in maintaining a state university, is engaged in an essential governmental function. "In final analysis the question we must decide is whether, by electing to support a governmental activity through the conduct of a business comparable in all essentials to those usually conducted by private owners, the state may withdraw the business from the field of federal taxation." The Court concluded that the business of conducting football games could not be thus withdrawn from federal taxation. Justices Butler and McReynolds dissented on the theory that the athletic program of the University is an integral part of its work, and that in engaging in it the state is carrying on an activity very different from the sale of liquor or the running of a railroad.

In Helvering v. Therrell,[23] a unanimous Court held that the federal government may properly tax the compensation paid to attorneys and others for services rendered in connection with the liquidation of banks and other corporations carried out under the provisions of a state statute. The compensation in question was paid out of the funds of the liquidated

[20] 285 U.S. 393, 1932. See this REVIEW, Vol. 27, p. 43.
[21] 257 U.S. 501, 1922. [22] 304 U.S. 439, 1938. [23] 303 U.S. 218, 1938.

corporation; none of the persons receiving it was an officer of the state; none was engaged in any business utilized by the state in the discharge of essential governmental duties. All the transactions were, in short, private transactions between private individuals.

(3) *Spending Power—Federal Loans to Municipalities.* The validity of federal loans in the form of P.W.A. grants made to municipal corporations for the construction of electricity distribution systems was attacked in Alabama Power Co. v. Ickes.[24] Government funds had thus been loaned to four municipal corporations in Alabama. The plaintiff company sought an injunction to restrain these loans, claiming, first, that they were beyond the power of Congress, and second, that the funds were to be used to establish businesses which would injuriously compete with the plaintiff. The Court, speaking through Mr. Justice Sutherland, denied relief. On the authority of Massachusetts v. Mellon,[25] the plaintiff had no standing in Court to question the propriety of the federal loan. As an individual taxpayer, its interest in the disposition of particular moneys in the Federal Treasury is so remote and infinitesimal as to preclude its having any right of action in the premises. Nor is the company entitled to relief against the anticipated competition. While it has contracts with each of the municipalities in question, these are non-exclusive. The four municipalities are fully empowered to establish municipally owned and operated power plants, and the threatened competition is accordingly entirely legal in the absence of any franchise contract definitely precluding it. "What the petitioner anticipates, we emphasize, is danger to something it does not possess—namely, a right to be immune from lawful municipal competition."

(4) *Currency Power.* Some of the basic problems involved in the Gold Clause controversy of 1935 reappeared in the case of Smyth v. United States.[26] The Secretary of the Treasury called for the redemption of certain Liberty Loan bonds far in advance of their dates of maturity and stipulated the termination of the running of interest on the bonds at the date of redemption. The government was empowered to take this action, since the right to do so was plainly incorporated in the bonds themselves. The plaintiff contended that the government has no such right, since its intention in calling in the bonds is to pay them off in present legal tender currency instead of the gold or gold equivalent stipulated in the bonds. He raises, accordingly, the whole question presented earlier in Perry v. United States.[27] Mr. Justice Cardozo wrote the Court's opinion upholding the Treasury action. He does not go again into the specific constitutional issues, but merely points out that the Secretary of the Treasury, in calling the bonds for redemption, is acting within his obvious authority, and that

[24] 302 U.S. 464, 1938. [25] 262 U.S. 447, 1923. [26] 302 U.S. 329, 1937.
[27] 294 U.S. 330, 1935. See this REVIEW, Vol. 30, p. 67.

his authority has not been changed by the monetary policy of Congress or by intervening statutes whereby the principal and interest on the bonds will be paid in a medium or on a basis other than that originally stipulated. Mr. Justice Stone filed a concurring opinion which is of interest. It may be recalled that in the Perry case, he expressed no opinion on the question of the right of Congress to repudiate its own gold clause obligations, on the ground that the constitutional issue was not squarely before the Court. In the present case, he states his opinion that government bonds have the same status as private bonds with respect to the operation of the Gold Clause Resolution, and that both are subject to the paramount authority of Congress to regulate the currency.

(5) *Bankruptcy.* In 1937, an amendment was added to the Federal Bankruptcy Act providing for the composition of the indebtedness of local tax agencies created by state law. A California irrigation district declared itself insolvent and applied for a composition of its debts under the provisions of this statute. It owed $1,427,000 in bonds and $439,000 in unpaid interest. It proposed a composition under which creditors holding eighty-seven per cent of the principal agreed to this arrangement. Other creditors, however, brought suit against the assets of the district and attacked the federal statute as violating the Fifth and Tenth Amendments. This is the case of United States v. Bekins.[28] The act was held valid in an opinion written by Chief Justice Hughes. A proceeding for the composition of debts falls within the scope of federal bankruptcy power. The state of California has formally consented to the operation of the act through legislation of its own, and the federal statute is so drawn as not to invade the reserved powers of the state. In Ashton v. Cameron County Water Improvement District,[29] the Municipal Bankruptcy Act had been held to interfere, potentially at least, with the fiscal affairs of the states. It therefore violated the Tenth Amendment under the doctrine of "dual federalism." The present statute avoids these difficulties. The state here retains full control over its fiscal affairs. The bankruptcy power is exercised only when authorized by state law. The taxing agency itself is the only instrumentality which can seek the benefits of the federal statute. Its creditors, in other words, cannot throw it into involuntary bankruptcy. The federal statute provides a useful and necessary type of coöperation between the state and national government under which the state, lacking the power to extend aid directly, permits its municipal subdivisions to receive the coöperative advantages extended by the federal law. "Nor did the formation of an indestructible union of indestructible states make impossible coöperation between the nation and the states through the exercise of the power of each to the advantage of the people who are citizens of both. . . .

[28] 304 U.S. 27, 1938.

[29] 298 U.S. 513, 1936. See this REVIEW, Vol. 31, p. 258.

The state acts in aid, and not in derogation, of its sovereign powers. It invites the intervention of the bankruptcy power to save its agency, which the state itself is powerless to rescue. Through its coöperation with the national government, the needed relief is given. We see no ground for the conclusion that the Federal Constitution, in the interest of state sovereignty, has reduced both sovereigns to helplessness in such a case." Justices McReynolds and Butler dissented on the ground of the Ashton case.

(6) *Territories and Ceded Districts.* In People of Puerto Rico v. Shell Company,[30] the company was charged with violation of the territorial anti-trust act of 1907. A lower federal court dismissed the case on the ground that the Sherman Act and Clayton Act covered the entire legislative field, and thereby rendered the territorial statute invalid. The Court, in a unanimous opinion by Mr. Justice Sutherland, upheld the territorial statute. The Sherman Act of 1890 is applicable to "any territory of the United States," and although passed long before Puerto Rico was acquired, the character and purpose of the statute justify a liberal construction of the term "territory" to include all organized territories of the United States, whether or not incorporated. The federal anti-trust laws, in other words, do apply in Puerto Rico. They do not, however, supersede the local statutes. The organic acts passed by Congress to govern Puerto Rico aim to give full power of local self-determination "with an autonomy similar to that of the states and incorporated territories." There was no intention to limit the exercise of local power to those subjects in respect of which there is an absence of explicit legislation by Congress. There is no constitutional reason why the territorial anti-trust act should not exist side by side with the federal statutes. There is no risk of double jeopardy, since prosecution under one of the acts would bar prosecution under the other, inasmuch as both territorial and federal courts are created by the same sovereign, Congress. Nor is there danger of conflict of jurisdiction. The local courts will enforce the local law and the federal courts the federal law. The officers charged with the enforcement and administration of both statutes are under the control of the same sovereign and may be presumed to work in harmony.

In Collins v. Yosemite Park and Curry Co.,[31] California undertook to require a state license for the sale of liquor within the national park and to collect taxes upon such sale. The company operated hotels, camps, and stores under lease made with the Secretary of the Interior. Yosemite Park was ceded to the United States by California. The Court holds that the state may tax the sale of liquor in the park, but may not require a license to sell. This distinction rests upon the fact that the federal government acquired the park under a qualified agreement by which California reserved the right to tax. The state did not, however, reserve

[30] 302 U.S. 253, 1937. [31] 304 U.S. 518, 1938.

general police authority within the park and may not, therefore, use that power to require a liquor license. Mr. Justice Reed examines the question whether the federal government may acquire exclusive jurisdiction by cession over lands not to be used for the express purposes, i.e., "forts, garrisons, arsenals, dockyards, and other needful buildings," mentioned in Article 1 of the Constitution. It has always been assumed that Congress is not limited to these purposes, and there is no reason why Congressional power should not be implied to acquire exclusive jurisdiction over ceded lands for any purposes, or to acquire limited jurisdiction upon such terms as may be mutually acceptable to the federal government and to the states.

II. JUDICIAL POWER

(1) *The Eligibility of Mr. Justice Black.* The first case to confront the Court when it convened was a petition for an order requiring Mr. Justice Black to show cause why he should be permitted to serve as an Associate Justice of the Supreme Court. His eligibility was attacked on two grounds. First, the Judiciary Act of 1937 had established more advantageous arrangements for the retirement and pensioning of Supreme Court justices. This amounted to an increase in the emoluments of the office, and Mr. Justice Black was barred by operation of the provision in Article 6 which reads: "No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time," since he had been a member of the Senate when the act of 1937 was passed. Secondly, no vacancy existed on the Court to which he might be appointed. This rested on the theory that the provision of the statute of 1937 permitting Supreme Court justices to "retire" rather than resign has no sanction in the Constitution, and is therefore void. Mr. Justice Van Devanter had retired and had not resigned. He is accordingly still a member of the Court. The Supreme Court did not pass upon these interesting questions. The motion for the petition was brought by a private attorney on his own behalf. The Court held that the petitioner could show no substantial interest sufficient to warrant invoking the judicial power in order to determine the validity of legislative or executive action. His was merely a general interest common to all members of the public, and his motion was denied.[32]

(2) *The Overruling of Swift v. Tyson.* A case of great interest and importance is that of Erie Railroad Company v. Tompkins,[33] in which the Court, speaking through Mr. Justice Brandeis, overruled the case of Swift v. Tyson,[34] decided in 1842. In Swift v. Tyson, Mr. Justice Story established

[32] *Ex parte* Albert LeVitt, 302 U.S. 633, 1937.
[33] 304 U.S. 64, 1938. [34] 16 Peters 1, 1842.

the rule that the federal courts in cases of diversity of citizenship, and in the absence of state statutes, were to apply to the decision of the case in hand their own independent judgment on matters of "general law," instead of applying the common law of the state. This was a judicial interpretation of Section 34 of the Federal Judiciary Act of 1789 which reads: "The laws of the several states, except where the Constitution, treaties, or statutes of the United States otherwise require or provide, shall be regarded as rules of decision in trials at common law, in the courts of the United States, in cases where they apply." According to Story, the phrase "the laws of the several states" meant statutes alone and not common law doctrines, and where there were no state statutes the federal courts were to formulate their own doctrines of "general law."

In the present case, Tompkins had been injured by a projection from a freight train while walking along the railroad's right of way. Tompkins is a citizen of Pennsylvania and the railroad is a New York corporation. He sought damages in a federal court, alleging the negligence of the company, since he was on the premises as a licensee because walking on a common footpath. The company insisted that under the Pennsylvania common law it owed no greater duty to Tompkins than that owed to a trespasser, that is, to refrain from intentional injury. Tompkins denied that the Pennsylvania courts established such a rule, pointed out that there was no state statute on the subject, and contended that the federal court must, under the doctrine of Swift v. Tyson, determine as a matter of general law the railroad's liability.

Mr. Justice Brandeis proceeds directly to the question of whether Swift v. Tyson should be overruled. The construction given by Story to the 34th Section of the Judiciary Act of 1789 must be revised in the light of the researches of Mr. Charles Warren, embodied in an article entitled "New Light on the History of the Federal Judiciary Act of 1789," published in 1923.[35] According to Warren, Congress intended that in cases of diversity jurisdiction, the unwritten as well as the written law of the state should apply in all matters not clearly controlled by established federal law. Swift v. Tyson rests, therefore, upon inaccurate historical analysis. It is open to attack also because of its practical results. It has produced political and social difficulties. Set up to secure uniformity in the law, the doctrine has actually prevented that uniformity, has produced uncertainty as to which law shall govern in concrete cases, and has actually resulted in a denial of the equal protection of the laws. "In attempting to promote uniformity of law throughout the United States, the doctrine has prevented uniformity in the administration of the law of the state." The injustice and confusion resulting from the rule have often been urged as reasons for abolishing entirely federal jurisdiction in cases

[35] *Harvard Law Review*, Vol. 37, p. 49.

arising out of diversity of citizenship. This drastic change has been suggested as the only effective way to eliminate an unconstitutional doctrine. The rule of Swift v. Tyson is, furthermore, inherently unsound for the reason pointed out by Mr. Justice Holmes in Kuhn v. Fairmount Coal Co.[36] Holmes attacked the doctrine on the ground that it assumes the existence of a transcendental body of law outside of any particular state but binding within its borders. "Law does not exist without a definite authority behind it," and there is no definite authority behind the "general law" promulgated by the federal courts in these cases. Mr. Justice Brandeis, therefore, concludes that the rule of Swift v. Tyson involves an unconstitutional assumption of power by the federal courts, an invalid invasion of state reserved powers.

Mr. Justice Butler dissented. It was unnecessary in this case to consider the constitutional question decided by the Court. However, Swift v. Tyson has been law for nearly one hundred years, and the failure of Congress to modify the doctrine in the face of criticism indicates its desire to see the rule maintained. He takes the majority to task for accepting Mr. Warren's article as authoritative and conclusive. The author made no such claims for it, and the important points involved were not made the subject of argument before the Court. Mr. Justice Reed concurred in the result, but objected to the majority statement that the course pursued by the federal courts has been unconstitutional. He preferred to regard the decision as merely correcting an erroneous statutory construction.

(3) *The Norris-LaGuardia Act.* The Norris-LaGuardia Anti-Injunction Act was applied in two cases, of which the first was New Negro Alliance v. Sanitary Grocery Company.[37] The company operates more than two hundred retail stores in the District of Columbia and employs both whites and negroes. The petitioner is a society organized for the mutual improvement of its members. No employer-employee relationship existed between the parties. The Alliance requested the company to employ negroes in certain of its stores in the normal course of personnel changes. This was refused, and the Alliance thereupon picketed these stores in an orderly manner by the display of signs alleging discrimination against negroes. The statements on the signs were found to be true. The courts of the District granted an injunction restraining the continuance of the picketing. Do the facts present a labor dispute within the meaning of the Norris-LaGuardia Act? If so, the injunction was invalidly granted. The Court, speaking through Mr. Justice Roberts, held that the dispute in question was a labor dispute, even though racial discrimination was also involved. This being so, the lower court could issue an injunction only

[36] 215 U.S. 349, 1910. [37] 303 U.S. 552, 1938.

on the threat of unlawful acts or irreparable injury to property. The evidence disclosed no such threats, and the injunction illegally prevented the orderly display of information pertinent to the labor dispute. Justices McReynolds and Butler dissent on the ground that no labor dispute existed and that injunctive relief was necessary to prevent interference with the company's freedom of action.

In Lauf v. Shinner,[38] the Norris-LaGuardia Act was again invoked. The respondent is a Delaware corporation owning meat markets in the city of Milwaukee. Lauf and others constitute an unincorporated labor union, none of whose members is employed by the respondent. The union picketed the stores of the respondent in an effort to coerce its employees to join the union and advertised that the company was unfair to organized labor. The Court held the Norris-LaGuardia Act applicable, on the ground that under the laws of Wisconsin the controversy in question constituted a labor dispute. An injunction restraining the picketing was therefore improvidently issued by the federal district court. Mr. Justice Butler dissented on the ground that there is no relation between the union and the company, and thus no labor dispute within the meaning of the federal act.

(4) *Original Jurisdiction of Supreme Court—Suit by State.* The right of a state of the Union to bring an original action in the Supreme Court to enforce the statutory liability of a shareholder in a state bank which is in course of liquidation was involved in Oklahoma *ex rel* Johnson v. Cook.[39] The state statutes create such liability of stockholders and direct the bank commissioner to bring, in the name of the state, suits necessary to enforce the liability. In a unanimous opinion written by Chief Justice Hughes, the Court refused to take jurisdiction. It is not sufficient, to invoke the original jurisdiction of the Supreme Court, that a state appear as a plaintiff. This was established in Florida v. Mellon,[40] where the state was non-suited by reason of lack of specific interest in the case. Nor is it enough that the state has acquired legal title to an action if in reality the recovery sought is for the benefit of others. This was the case in New Hampshire v. Louisiana,[41] in which the state brought action for the benefit of private bondholders. The crucial point is the reality of the state's interest in the controversy. This need not in all cases be a direct proprietary interest, but can be "quasi-sovereign," as in the case of Kansas v. Colorado.[42] In the present case, the state can show no direct interest of its own. It is acting on behalf of the bank's creditors, who are the real parties of interest. The heavy burden upon the Court's docket which would result from taking jurisdiction in such cases emphasizes the

[38] 303 U.S. 323, 1938. [39] 304 U.S. 387, 1938.
[40] 273 U.S. 12, 1927. See this REVIEW, Vol. 22, p. 81.
[41] 108 U.S. 76, 1883. [42] 206 U.S. 46, 1907.

need for a strict enforcement of the doctrine that the state may sue only when it has a genuine interest in the case.

III. VETO POWER OF THE PRESIDENT

Wright v. United States[43] deals with a somewhat technical problem concerning the President's veto power. A bill giving the Court of Claims jurisdiction to rehear Wright's claim against the United States was presented to the President on Friday, April 24, 1936. The bill originated in the Senate. On Monday, May 4, the Senate recessed until noon, Thursday, May 7; the House remained in session. On May 5, the President returned the bill to the Senate with a message stating his objections. The message was accepted by the secretary of the Senate, and when the Senate reconvened, the president of the Senate read the message, and the bill was referred to committee. The government claimed that the bill never became law, since it was not re-passed after a valid veto by the President. The petitioner claimed that the bill became law without the President's approval, since his attempt to veto it was ineffective. The Court, speaking through Chief Justice Hughes, held that the veto was effective. The bill was not returned during an adjournment of Congress. The Senate was in recess, but "Congress" was still in session, since the House had not adjourned. Congress, as the term is used in the relevant sections of the Constitution, means both houses. The secretary of the Senate was able to and did receive the bill. The present case is distinguished from the Pocket Veto Case[44] on the ground that this was a temporary recess of one house, and not, as in that case, the adjournment of both houses at the end of a regular session.

Mr. Justice Stone concurred, in an elaborate opinion in which he was joined by Mr. Justice Brandeis. The bill did not become law, because the Senate by adjournment prevented its return within the ten days allowed to the President. The President's action amounted to a pocket veto. The majority doctrine that the Senate was technically in session although it had recessed is sharply attacked, and the main argument of the Chief Justice is criticized severely as dangerous *dictum*.

IV. FEDERAL BILL OF RIGHTS

(1) *Self-incrimination and Wire-tapping.* While no constitutional issue is involved, Nardone v. United States[45] clarifies the present legal status of wire-tapping by government agents. Nardone was convicted of smuggling alcohol. Evidence against him secured by federal agents through wire-tapping was admitted. The Federal Communications Act provides:

[43] 302 U.S. 583, 1938.
[44] 279 U.S. 655, 1929. See this REVIEW, Vol. 24, p. 67.
[45] 302 U.S. 379, 1937.

"No person not being authorized by the sender shall intercept any communication and divulge or publish the existence, contents, substance, purport, effect or meaning of such intercepted communications to any person." Does this provision apply to federal law enforcement agents? If so, the admission of evidence thus unlawfully secured constitutes re versible error. The Court, in an opinion by Mr. Justice Roberts, held that the statute does apply to federal officers. Congress, in using the term "no person," means exactly what it says. The term is all-inclusive, and if the result obtained is in any sense undesirable, Congress may easily modify the statute. The Court adopted this interpretation in spite of the fact that ever since the Olmstead Case,[46] Congressional committees have been considering the desirability of legislation dealing with wire-tapping, and in spite of the fact that several bills prohibiting the practice have failed to pass. Mr. Justice Sutherland dissented. The word "person" does not include an officer of the United States engaged in law enforcement. "We may well pause to consider whether the application of the rule which forbids the invasion of the privacy of telephone communications is not being carried in the present case to a point where the necessity of public protection against crime is being submerged by an overflow of sentimentality."

(2) *Double Jeopardy.* Helvering v. Mitchell[47] presents an interesting question of double jeopardy. Charles E. Mitchell deducted from his income tax for 1929 losses amounting to nearly $3,000,000 resulting from the sale of stock to his wife. He failed to report certain other income. He was prosecuted under the criminal sections of the Revenue Act and was acquitted. The Commissioner of Internal Revenue contended that the deductions and evasions were fraudulent, that the amounts in question were fully taxable, and that a fifty per cent additional levy, amounting to over $300,000, by way of civil penalty must also be paid. The Board of Tax Appeals and the Circuit Court of Appeals held Mitchell liable for tax on the deductions and unreported income, but disallowed the penalty on the ground of double jeopardy. The Supreme Court upheld both the tax and the penalty. The opinion of Mr. Justice Brandeis rejected Mitchell's contention that all relevant facts and issues relating to his tax liability had been tried in the criminal action, and that under the doctrine of *res adjudicata* the government may not obtain a second judgment on the same facts and issues. There is a difference in the degree of burden of proof in a civil action and a criminal action which prevents the application of *res adjudicata.* Mitchell's acquittal established merely that there was not sufficient proof to overcome all reasonable doubt as to his guilt. It actually established no other fact. In the criminal action, he was tried

[46] 277 U.S. 438, 1928. See this REVIEW, Vol. 23, p. 83.

[47] 303 U.S. 391, 1938.

for willfully attempting to evade the tax. This is not the same as the question whether he had actually evaded the tax unlawfully. The plea of double jeopardy was also rejected. Mitchell claimed that the fifty per cent penalty is additional punishment which, because of his acquittal, may not be imposed upon him. The Court rejects this view. The civil penalty is not punitive. It is a civil sanction to insure full and honest disclosure of all facts relevant to tax liability, as well as to reimburse the government for the heavy costs of investigation. It is remedial in its purpose. This conclusion is based on interpretation of the statute, close examination of which convinces the Court that Congress regarded the penalty as civil and not criminal.

(3) *Due Process of Law—Administrative Procedure.* In several cases, the Court undertook to clarify the requirements of due process of law as applied to the procedure of quasi-judicial regulatory agencies. Whether it did so is a matter of some dispute. In the case of Morgan v. United States,[48] in 1936, the Court held that Morgan had not had a hearing under the Packers and Stockyards Act which was consistent with due process, since he had not been allowed to allege in the District Court that the Secretary of Agriculture had not personally examined the record upon which his subsequent order was based. Due process required that the record be examined by the officer who makes the decision. The case was remanded for full exploration of the exact nature of the proceedings conducted before the Secretary.

In Morgan v. United States,[49] the case reappeared for determination as to whether fair hearing had actually been given the plaintiff. The nature of that hearing was fully described in the record. Elaborate evidence was originally taken by a trial examiner designated by the Secretary to conduct a hearing upon the complaints. A voluminous record, comprising some ten thousand pages of evidence and one thousand exhibits, was accumulated. The trial examiner did not, however, formulate any findings or conclusions. There followed a hearing before the Secretary of Agriculture. Briefs were filed by the appellants and the records of the hearing before the trial examiner were sent up to the Secretary. He stated candidly that he skimmed them through, but that he did not read them in their entirety. Oral arguments before the Secretary were general and sketchy. No brief was filed by the government. After the oral hearing, the Secretary issued an order which he stated was the product of his own independent judgment upon findings made by officers in the Bureau of Animal Industry. Morgan claimed a denial of due process of law, on the ground that he was not presented with any findings or conclusions made by the trial examiner upon the evidence, that he was therefore unaware

[48] 298 U.S. 468, 1936. See this REVIEW, Vol. 31, p. 267. [49] 304 U.S. 1, 1938.

of the exact import of the government's case against him, and that he had no adequate opportunity to examine it or file exceptions to it.

Speaking through Chief Justice Hughes, the Court agreed that there had been a denial of due process. In a proceeding as complicated as this, with the Department's final findings amounting to one hundred eighty, it is essential to "the rudimentary requirements of fair play" that those subject to the Secretary's order have a fair opportunity to know the government's preliminary findings of fact against them and to present exceptions to those findings before a final order is issued. In the first Morgan case, the Court had refused to lay down a general rule that due process requires in all cases that those subject to administrative regulation shall be given access to the formal findings and record of the trial examiner. The requirement of due process is practical and not technical, and in the present case substantial justice requires that formal findings be made and the appellants be allowed to except to them. The Chief Justice closed his opinion with the following paragraph embodying a bit of advice to federal regulatory agencies in general: "The maintenance of proper standards on the part of administrative agencies in the performance of their quasi-judicial functions is of the highest importance and in no way cripples or embarrasses the exercise of their appropriate authority. On the contrary, it is in their manifest interest for, as we said at the outset, if these multiplying agencies deemed to be necessary to our complex society are to serve the purposes for which they are created and endowed with vast powers, they must accredit themselves by acting in accordance with the cherished judicial tradition embodying the basic concepts of fair play."

After the decision in the present case, the Solicitor-General petitioned for rehearing, alleging that the Court, in requiring that there be a formal report filed by the trial examiner to which exceptions might be taken, had, without hearing argument, reversed the rule announced in the first Morgan case to the effect that such a record was not necessary to due process of law. The Court denied the petition for rehearing, stating rather curtly that no reversal was involved.[50] It declared that its first statement had merely been that due process does not in all cases demand a formal record, and that in the second Morgan case it had held that in concrete circumstances where essential justice demanded it, the preparation of such a record was required by the due process clause.

A case involving the procedure of the National Labor Relations Board arose very probably as a result of the decision in the Morgan case. This is the case of In the Matter of the Petition of N. L. R. B.[51] The Board issued an order against the Republic Steel Company to desist from certain

[50] Morgan v. United States, 304 U.S. 23, 1938. [51] 304 U.S. 486, 1938.

unfair labor practices. The company took the case to the Circuit Court of Appeals for review, alleging that the Board's order denied due process because of an inadequate hearing. The trial examiner had filed no report, and the company consequently had had no chance to file exceptions to it. The Board petitioned for mandamus directing the Circuit Court of Appeals to return the case in order that the Board might reopen it and provide the full hearing lacking in the first instance. The Board was obviously trying to conform to the mandate with respect to fair procedure embodied in the Morgan decision. The Court issued the mandamus and allowed the case to be reopened. No substantial constitutional issue is involved.

A case of vital importance to the National Labor Relations Board was that of Myers v. Bethlehem Shipbuilding Corporation.[52] A labor union charged the company with engaging in unfair labor practices. The Board filed a complaint alleging that the company was engaged in interstate commerce and was guilty of the alleged unfair labor practices. It notified the company that a hearing would be held upon this complaint. Instead of subjecting itself to a hearing before the Board or its agents, the company applied to the district court for an injunction restraining the Board from holding a hearing under the act, on the ground that it was not engaged in interstate commerce and therefore its labor relations were not subject to the jurisdiction of the Board. The district court issued the injunction. A unanimous Court, speaking through Mr. Justice Brandeis, held that the injunction was issued unlawfully. The company is not entitled to judicial relief until it exhausts the administrative remedies provided by law. This it has not done. The Board, in filing a complaint, must reach a conclusion as to whether an employer is engaged in interstate commerce. If he is not so engaged, the act is, of course, inapplicable. The Board's decision on this point, however, is not final. No order issued by it can be executed except through the agency of the Circuit Court of Appeals. That court, in deciding whether to enforce or dismiss the Board's order, will review all questions of law affecting the rights of persons subject to the order. The company, therefore, was denied no constitutional right by being subjected to the Board's authority, and the subsequent judicial review of the Board's action by the Circuit Court of Appeals. Any other decision would have wrecked the National Labor Relations Board by permitting those against whom its complaints are filed to flout its jurisdiction by transferring their cases at the outset to the district court. This the Supreme Court refused to permit.

The difficulty in drawing any clear line between questions of law and questions of fact in the judicial review of the findings of administrative agencies is emphasized in Bogardus v. The Commissioner of Internal

[52] 303 U.S. 41, 1938.

Revenue.[53] In this case, a corporation licensed various patents on a royalty basis. In order to avoid taxation, it distributed to its employees profits amounting to $600,000. The payment was described as an honorarium and not compensation, and the checks were mailed with a statement that no income tax need be paid on the gift. The plaintiff received $10,000 under these conditions. The Board of Tax Appeals decided that the payment was not a tax-free gift, but was income in the nature of compensation, and therefore subject to tax. Was this the determination by the Board of Tax Appeals of a question of fact and therefore final, or was it the decision of a question of law and therefore subject to judicial review? In a five-to-four decision, the Court, speaking through Mr. Justice Sutherland, held the conclusion to be one of law, or at least a determination of mixed law and fact, on which the Court might therefore properly substitute its judgment for that of the Board. Having taken jurisdiction of the issue, the Court concluded that the payment was a gift, and therefore tax-exempt. Four justices dissented in an opinion written by Mr. Justice Black. The payment was compensation for services, even though made without consideration. Gift and compensation are not mutually exclusive, but often overlap. The presence or absence of consideration is not controlling, but the intent of those making the payment is. The question of the intent of the company was one of fact, and the judgment of the Board of Tax Appeals upon it should be conclusive.

B. QUESTIONS OF STATE POWER

I. THE FOURTEENTH AMENDMENT

(1) *Equal Protection of the Laws.* The Twenty-first Amendment forbids the transportation or importation into any state or territory for delivery or use therein of intoxicating liquors in violation of the laws of such state or territory. In 1934, an Illinois corporation secured a license to sell liquor in Minnesota, and it thereafter carried on business there. In 1935, the state passed a statute forbidding the importation for sale in the state of liquors unless the brands are registered in the United States Patent Office. This applied to stocks of liquor acquired before its enactment. The corporation alleges denial of the equal protection of the laws. This is the case of Mahoney v. Joseph Triner Corporation.[54] The Supreme Court held the state statute valid. While the statute discriminated against liquor brought in from outside the state, the wording of the Twenty-first Amendment makes the equal protection clause of the Fourteenth Amendment inoperative where liquor is concerned. It is not necessary, therefore, to consider on its merits the question of whether the statute in this case is or is not a reasonable regulation of the liquor traffic.

[53] 302 U.S. 34, 1937. [54] 304 U.S. 401, 1938.

Breedlove v. Suttles[55] involved the validity of a Georgia statute providing for a poll-tax of one dollar on all inhabitants of the state between the ages of twenty-one and sixty, except women who do not vote and blind persons. No one may register for voting without paying the tax. The classification does not violate the equal protection clause. That clause does not require absolute equality of treatment. There is ample precedent for exempting the poor and the aged from various burdens, and women may as a class be accorded special consideration. The Nineteenth Amendment is not violated, since there is no denial of the suffrage on grounds of sex.

A local law of the city of New York placed a special tax on all public utilities doing business in the city. The proceeds were paid into a special account to be used for the relief of unemployment. The validity of this tax was contested in New York Rapid Transit Corporation v. New York,[56] on the ground that it denies the equal protection of the laws, also due process of law, and impairs the obligation of contracts. In an opinion by Mr. Justice Reed, the tax is held valid as applied to the plaintiff. There is no denial of equal protection, since common carriers and public utilities have special characteristics which justify according them separate treatment. They enjoy peculiar privileges, among which is freedom from competition. The fact that the plaintiff corporation is by its franchise contracts restricted to the charging of a five-cent fare, and is thereby prevented from passing the tax along, is a fortuitous but wholly irrelevant misfortune. It has nothing to do with the validity of the tax. Nor does the tax deny equal protection, because the plaintiff has no special responsibility for the unemployment which the proceeds of the tax are intended to alleviate. It is unnecessary to show a relationship between particular taxpayers and the purposes for which tax funds are employed. Liability to taxation rests upon the ability of the taxpayer to pay, rather than upon any connection he may have with the particular objectives of the tax. These points also answer the contention that the plaintiff has been denied due process of law. Nor does the act impair the obligation of any contract. There is nothing in the company's franchise or agreements with the city which exempts it from taxation, and, in accordance with judicial doctrine dating back tc Providence Bank v. Billings,[57] such an exemption will not be implied where it is not explicitly provided for.

Hale v. Kentucky[58] reaffirms Norris v. Alabama.[59] Hale's conviction for murder was set aside on the ground that he was denied the equal protection of the laws, since he was indicted and tried by juries from which negroes had been excluded because of their race. That the exclusion was

[55] 302 U.S. 277, 1937. [56] 303 U.S. 573, 1938.
[57] 4 Peters, 514, 1830. [58] 303 U.S. 613, 1938.
[59] 294 U.S. 587, 1935. See this REVIEW, Vol. 30, p. 83.

systematic and intentional is shown by the fact that between 1906 and 1936 no negroes had ever been summoned for grand jury or trial jury duty in the state courts in the county, although many had served on juries in the federal courts.

(2) *Due Process of Law.* In Connecticut General Life Insurance Co. v. Johnson,[60] the Connecticut corporation was admitted to California to carry on business therein. Part of the company's business was the making of contracts with other insurance companies reinsuring them against loss. These reinsurance contracts were made in Connecticut, where both premiums and losses were payable. California taxed the company upon the premiums paid on these reinsurance contracts. The company alleged that the tax violated the due process clause. The Supreme Court, in an opinion by Mr. Justice Stone, invalidated the tax on this ground. While the state may tax the company for the privilege of doing business within the state, it may not exact as the price of that privilege a tax on property or transactions lying outside its jurisdiction. The reinsurance contracts were not California transactions, and the company needed no California license in order to engage in them. "The grant by the state of the privilege of doing business there and its consequent authority to tax the privilege does not withdraw from the protection of the due process clause the privilege, which California does not grant, of doing business elsewhere."

In this case, Mr. Justice Black filed his much heralded dissenting opinion urging that corporations are not persons within the meaning of the due process clause of the Fourteenth Amendment. While recognizing that the Court has held the contrary for many years, he urged that it is not too late to correct an error, as evidenced by the Court's recent reversal of opinion in West Coast Hotel Company v. Parrish.[61] The legislative history of the Fourteenth Amendment does not support the view that Congress intended the protection of the Fourteenth Amendment to be extended to corporations. The evidence to the contrary embodied in the Journal of the Committee of Fifteen on Reconstruction, the secret document presented to the Supreme Court by Mr. Roscoe Conkling in his argument in the San Mateo case in 1885,[62] is inconclusive unless it can be shown that Congress, in proposing the amendment, held similar views. There is no evidence that Congress did so, and fairly conclusive evidence that it did not. While there is plausibility in Mr. Justice Black's argument, it calls for more than ordinary optimism to expect the Court to follow him at this late date.

An important due process case is Palko v. Connecticut.[63] Palko was

[60] 303 U.S. 77, 1938.
[61] 300 U.S. 379, 1937. See this REVIEW, Vol. 32, p. 298.
[62] San Mateo County v. Southern Pac. R.R. Co., 116 U.S. 138, 1885.
[63] 302 U.S. 319, 1937.

indicted for murder in the first degree and convicted of murder in the second degree. A Connecticut statute of 1886 permits the state to appeal in a criminal case on the basis of errors of law prejudicial to the state. The state enjoys the same right in this respect as the accused. Such an appeal was taken by the state in the present case, and a new trial was ordered by the appellate court upon the basis of errors found. The plaintiff protested against the new trial on the ground of double jeopardy. His objection was overruled, the new trial was held, he was convicted of first degree murder and sentenced to death. He alleged that this is a denial of due process of law, since protection against double jeopardy—a right guaranteed in the Fifth Amendment from federal invasion—is included in the liberty of which the state, under the Fourteenth Amendment, may not deprive him without due process of law. The Court, speaking through Mr. Justice Cardozo, rejects his contention. The issue presented leads the Court to examine with some care the whole problem of how much of the federal bill of rights is assimilated to the basic liberty protected against state invasion by the due process clause of the Fourteenth Amendment. Certain guarantees in the federal bill of rights have been held not to be included within the requirements of due process of law. Examples are the guarantees of grand jury indictment[64] and trial by jury,[65] and the protection against self-incrimination.[66] On the other hand, the Court has held that the due process clause of the Fourteenth Amendment prevents the states from abridging freedom of speech,[67] freedom of the press,[68] freedom of religion,[69] and the right of peaceable assembly,[70] and it guarantees to one accused of crime the benefit of counsel[71] and other basic requirements of a fair trial. The reason why some of these guarantees apply to the states is not because they are listed in the federal bill of rights, but because of their fundamental character. The provisions first mentioned are not part of the due process guarantee, because "they are not of the very essence of a scheme of ordered liberty," while those which have been made applicable to the states are essential to that liberty. "If the Fourteenth Amendment has absorbed them, the process of absorption has had its source in the belief that neither liberty or justice would exist if they were sacrificed." The Court concludes that

[64] Hurtado v. California, 110 U.S. 516, 1884.

[65] Maxwell v. Dow, 176 U.S. 581, 1900.

[66] Twining v. New Jersey, 211 U.S. 78, 1908.

[67] Near v. Minnesota, 283 U.S. 697, 1931. See this REVIEW, Vol. 26, p. 270.

[68] Grosjean v. American Press Co., 297 U.S. 233, 1936. See this REVIEW, Vol. 31, p. 271.

[69] Hamilton v. University of California, 293 U.S. 245, 1934. See this REVIEW, Vol. 30, p. 79.

[70] De Jonge v. Oregon, 299 U. S. 353, 1937. See this REVIEW, Vol. 32, p. 303.

[71] Powell v. Alabama, 287 U.S. 45, 1932. See this REVIEW, Vol. 28, p. 57.

the double jeopardy here involved is not forbidden by the guarantee of due process of law. "Is that kind of double jeopardy to which the statute has subjected him [the appellant] a hardship so acute and shocking that our policy will not endure it . . . ? The answer surely must be 'No.' . . . The state is not attempting to wear the accused out by a multitude of cases with accumulated trials. It seeks no more than this, that the case against him shall go on until there shall be a trial free from the corrosion of substantial legal error. . . . There is here no seismic innovation. The edifice of justice stands, in its symmetry, to many, greater than before."

The doctrine that the due process of law clause of the Fourteenth Amendment does protect freedom of speech and the press from state invasion is applied in Lovell v. Griffin[72] to invalidate a municipal ordinance of the city of Griffin, Georgia, prohibiting the distribution of all literature or circulars without the consent of the city manager. A religious tract had been distributed without securing this permission. Speaking through Chief Justice Hughes, the Court held that "the ordinance was invalid on its face and established a censorship of the press. The liberty of the press is not confined to newspapers and periodicals. It necessarily embraces pamphlets and leaflets. These indeed have been historical weapons in the defense of liberty, as the pamphlets of Thomas Paine and others in our own history abundantly attest. The press, in its historical connotation, comprehends every sort of publication which affords a vehicle of information and opinion."

United Gas Public Service Co. v. Texas[73] presents an interesting question of procedural due process. The public service commission, after a fair and full hearing, fixed rates for the sale of gas. The state statute established judicial review of such rate orders in the district court of the state and authorized in such review the presentation of questions of fact to a jury. This procedure was followed, and the jury, after being carefully charged by the judge, reached its verdict affirming the commission's findings. The company alleged denial of due process, on the ground, first, that a jury, notoriously inexpert, could not be expected to provide "the independent judicial judgment upon facts and law" to which the company is entitled. It alleged further that if a jury could be properly used for this purpose, due process required that special issues should be singled out for its separate consideration and determination. There was a general allegation that the rates fixed were confiscatory. In an opinion by Chief Justice Hughes, the Court held that there was no denial of due process in this procedure. The Court reviewed with care the actual conduct of the case, found that the manner of submitting issues to the jury had reasonably protected the rights of the company, and declared "we have

[72] 303 U.S. 444, 1938. [73] 303 U.S. 123, 1938.

never held that it is beyond the power of the state to provide for the trial by jury of questions of fact because they are complicated." The Court found no defects in procedure or substantive findings, and the orders of the commission were upheld. Justices Butler and McReynolds dissented on the ground that "to us the proceedings in the state court seem an empty show."

II. THE CONTRACT CLAUSE

Two cases of interest involved the application of the contract clause to the rights of school teachers. In Dodge v. the Board of Education,[74] certain annuities to be paid to teachers in the Chicago public schools upon retirement had been fixed by statute. These reached the maximum of $1,500 per year. Later, this was reduced by law to $500. The teachers contended that the original statute had created contractual rights which could not be impaired by later legislation. In an opinion by Mr. Justice Roberts, the Court held that no contract had been created. It is well established that a statute merely fixing salaries creates no contract and that the compensation may be altered at the will of the legislature. The presumption is that such a law is not intended to create private contractual rights, but merely formulates a policy of the state. The burden of overcoming this presumption rests upon those who allege the existence of a contract, and the Illinois statutes do not support the conclusion that a contract was intended.

In Indiana *ex rel* Anderson v. Brand,[75] however, a different result is reached. The petitioner sought a mandamus to continue her employment as a teacher in a township school. She was duly licensed and began teaching in 1924, and under successive contracts taught until 1933. In 1927, a teachers' tenure act was passed which conferred upon teachers permanent tenure except for causes of removal specified in the statute. In 1933, a statute was passed which the school authorities asserted repealed the teachers' tenure act of 1927 with respect to township teachers. The petitioner was thereupon served with notice of dismissal for cause, although there was no allegation that the dismissal was for any of the reasons specified in the act of 1927. The Court, speaking through Mr. Justice Roberts, held that the teacher in question had a contract of employment with the state which had been invalidly impaired by the act of 1933. The position of a teacher in the public schools of Indiana has been held by the Indiana courts to be not a public office, but contractual in its nature. The petitioner, therefore, had a valid contractual right to retain her position under the terms of the act of 1927. The contention that the police power of the state to regulate its public school system cannot be impaired by these contracts of teacher employment is met by the answer

[74] 302 U.S. 74, 1937. [75] 303 U.S. 95, 1938.

that it is not. Under the teachers' tenure act, the state retained full authority to dismiss teachers after notice and hearing for any causes relevant to the welfare of the school system. The state's independent management of its school system is in no way jeopardized by its obligation to retain the petitioner unless and until she may be lawfully removed under the provisions of the act of 1927. A dissenting opinion was filed by Mr. Justice Black, who contended that the governmental authority and police power of the state were interfered with by the enforcement of these contracts of employment.

In Hale v. Iowa State Board of Assessment and Review,[76] bonds of the state of Iowa had been issued which were described in their provisions as "tax free." At the time of issuance, Iowa levied no tax upon incomes, but in 1934 passed a general income tax law. Is the interest on these "tax free" bonds liable to state income taxation under the new law? In an opinion by Mr. Justice Cardozo, the Court held that the income tax can be imposed on the interest from the bonds. The case is one of statutory construction, and the result may, of course, be changed by later legislation. The holding illustrates, however, the Court's disposition to construe strictly contracts embodying exemption from taxation. The exemptions will not be enlarged by implication.

III. STATE AND FEDERAL RELATIONS

(1) *State Police Power and Interstate Commerce.* No very important or involved problems arose with respect to the exercise of state police power affecting interstate commerce. In Arkansas-Louisiana Gas Co. v. Department of Public Utilities,[77] the Court, in an opinion by Mr. Justice McReynolds, held that no burden was placed upon interstate commerce by a state law requiring a company engaging both in local and interstate commerce to file with the state authorities information relating to all of its operations, interstate as well as local. The corporation brought natural gas into the state of Arkansas through pipe lines from other states. This was interstate commerce. It also supplied local distribution centers with gas, and this was clearly local commerce. It could validly be required to supply information about both businesses.

The problem of how far a state may go in supplementing federal regulation of interstate and foreign commerce in fields not requiring uniform national control is dealt with in Kelly v. Washington *ex rel* Foss Co.[78] The company owns and operates 139 motor driven tugs which engage both in interstate and foreign commerce. The bulk of the business is interstate. A statute of the state of Washington passed in 1907 provided for the inspection and registration of vessels operating in state waters.

[76] 302 U.S. 95, 1937. [77] 304 U.S. 61, 1938. [78] 302 U.S. 1, 1937.

Were these state regulations applicable to the company's tugs? The company claimed that the state is completely ousted from authority to regulate the subject-matter, while the state argued that its regulations are valid since as they do not conflict with any federal regulatory provisions and have been enforced at all times so as to avoid such conflict. After hearing argument, the Supreme Court ordered reargument and invited the Attorney-General of the United States to present the views and interests of the federal government. The Court upheld the state regulations in an opinion written by Chief Justice Hughes. It rested its decision upon three grounds. First, there is no actual conflict between any of the state regulations and those of the federal government. On the contrary, the state law supplements the federal regulations in a useful manner, filling in gaps which would otherwise menace public safety. Second, there is no evidence of intention upon the part of Congress to occupy the entire field of control in such a manner as to exclude supplementary and non-competing state regulation. Congress could do this, but has not done so. Third, the field of regulation is not one in which uniform national policy must of necessity prevail. Viewed practically, it lends itself to varied and local treatment. Consequently, under the time-honored rule of Cooley v. The Board of Wardens,[79] state regulations are valid.

The case of South Carolina State Highway Department v. Barnwell Brothers[80] involved the validity of a state statute passed in 1933 prohibiting the use on state highways of motor trucks and semi-trailer motor trucks whose width exceeds 90″ and whose weight, including load, exceeds 20,000 pounds. The statute was attacked as a denial of due process and a burdensome interference with interstate commerce. In an opinion by Mr. Justice Stone, the Court held the statute valid. The decision rests on precedent, but the opinion is valuable in its careful review of the range of state authority to control the use of its own highways, as well as the Court's recognition of the broad range of legislative discretion to establish forms of regulation not clearly arbitrary. It had been urged upon the Court that the weight of current opinion, as evidenced particularly by the report of the National Conference on Street and Highway Safety, recognizes the propriety of much less rigorous restrictions on highway traffic than those embodied in the South Carolina statute. The state, however, is not obliged to follow the "best" opinion. "Since the adoption of one weight or width regulation, rather than another, is a legislative, not a judicial choice, its constitutionality is not to be determined by weighing in the judicial scales the merits of the legislative choice and rejecting it if the weight of evidence presented to the Court appears to favor a definite standard."

[79] 12 Howard 299, 1852. [80] 303 U.S. 177, 1938.

(2) *State Taxation and Interstate Commerce.* In Adams Mfg. Co. v. Storen,[81] the Indiana gross income tax act of 1933 was held void as applied to the appellant company. The company manufactures road machinery in Indiana, where it has its home office. Eighty per cent of its products, however, are sold in interstate and foreign commerce. The Court, speaking through Mr. Justice Roberts, held that a gross income tax levied on the business of the company is a burden upon this interstate commerce. The tax is not a tax on the privilege of operating a business in the state of Indiana alone. It makes no distinction as to the source of the receipts taxed. By taxing receipts derived from interstate and out-of-state operations, it exposes the company to the risk of double taxation, which in itself constitutes a burden on interstate commerce. This burden is not lifted by the mere fact that the tax is general and non-discriminatory. Mr. Justice Black dissented in an opinion in which he held that the state tax was not aimed at interstate commerce, that it was not regulatory, that it was merely a state revenue measure, and that the Court should depart from its earlier strict interpretation and refrain from impairing the revenue power of the state except in cases of the clearest kind.

A Louisiana statute laid a privilege tax on the production of mechanical power. In Coverdale v. Arkansas-Louisiana Pipe Line Co.,[82] this was held validly applicable to an engine used for compressing natural gas in order that it may be transported by pipe line both in Louisiana and into neighboring states. The Court, speaking through Mr. Justice Reed, held that the tax does not burden interstate commerce. It is a privilege tax upon the conduct of a local business. The mechanical process of compression takes place before the interstate commerce begins. It is as much a local transaction as the generation of electric power.

Western Livestock Co. v. Bureau of Revenue[83] upheld the validity of a New Mexico privilege tax on "specified" businesses, as applied to gross receipts received from the sale of advertising space by those who publish newspapers and magazines. The tax was two per cent. The appellants publish a monthly livestock trade journal which circulates both within and without the state of New Mexico, and they alleged a burden upon interstate commerce resulting from a tax on the sale of advertising in this journal. The opinion of the Court was written by Mr. Justice Stone. The advertising contracts in point are not in and of themselves interstate commerce transactions. The mere formation of contracts between persons of different states is not within the protection of the commerce clause unless the performance of the contracts falls also within that protection. The performance of these advertising contracts does depend to some extent upon the circulation of the magazine outside the state, but even so the

[81] 304 U.S. 307, 1938. [82] 303 U.S. 604, 1938. [83] 303 U.S. 250, 1938.

tax does not amount to an unconstitutional burden. The protection of the commerce clause does not relieve persons of the payment of their just share of the state tax burden. "Even interstate commerce must pay its way." While the tax may add somewhat to the expense of carrying on interstate commerce, it is not prohibited solely for that reason in the absence of direct burden or discrimination. The present tax is an excise on a local business. The business of preparing, printing, and publishing a magazine is local, and is distinct from the circulation of the magazine. A tax measured by the selling price is reasonable, since selling price is an accurate measure of value. The tax imposes no substantial burden upon the number of magazines sold in interstate commerce, and it is so levied that it cannot be repeated by other states, with the consequent danger to the appellant of double taxation. Justices Butler and McReynolds dissent.

The state of Washington levied a tax on the business of a stevedoring company measured by a percentage of its gross receipts. This was held void in Puget Sound Stevedoring Company v. Tax Commission,[84] in an opinion written by Mr. Justice Cardozo. The appellant's business is exclusively interstate and foreign commerce, stevedores being indispensable to such commerce. Since this is the case, the state had no power to tax the privilege of carrying on the business.

In Atlantic Refining Co. v. Virginia,[85] the Court held that the state could lawfully exact from the company a fee, based on the company's authorized capital stock, as the price of the privilege of entering the state to do local business. The fee was in this instance $5,000. Speaking through Mr. Justice Brandeis, the Court pointed out that the fee was not a tax, but a charge made for the privilege which the state granted. The sum of $5,000 is not an unreasonable charge for a long-term privilege. It is not repeated, so that it need not bear any particular relation to the company's sales for the current year. It is comparable to a charter or incorporation fee of a state corporation. It imposes no burden upon interstate commerce and does not deny due process of law.

(3) *State Taxation of Federal Instrumentalities.* Three cases involved problems of state taxation affecting instrumentalities or interests of the federal government. These decisions reflect in some measure the same judicial disposition to narrow the range of tax immunity which was so strikingly evidenced in Helvering v. Gerhardt.[86] The most elaborately reasoned decision was that in James v. Dravo Contracting Co.[87] The state of West Virginia laid a tax on the gross receipts of the company, which is engaged in constructing locks and dams on navigable streams under

[84] 302 U.S. 90, 1937. [85] 302 U.S. 22, 1937.
[86] *Supra*, p. 237. [87] 302 U.S. 134, 1937.

contracts with the federal government. The state regards the tax as a privilege tax on all contractors carrying on business within the state. The respondent is a Pennsylvania corporation which has been duly admitted to do business in West Virginia. Two issues were raised. First, inasmuch as the respondents are carrying on work on federal property, does the state have territorial jurisdiction to impose the tax? Second, does the tax invalidly burden the federal government? In a five-to-four decision, the Court, speaking through Chief Justice Hughes, upholds the tax on both grounds. If the operations of the company are being carried on within territory ceded by the state to the federal government, and within which the federal government not only has the right to exercise, but is exercising, exclusive jurisdiction, the state would have no jurisdiction to tax. This is not the case here. The state has retained title to the river beds on which the work is being done. This is true even though Congress has the power to use the river in the interests of navigation. The federal property on the river banks was acquired by eminent domain by the federal government. The title is in fee simple. This title does not, however, withdraw the land from the jurisdiction of the state, except in so far as is necessary to avoid interference with federal powers and activities carried on therein. The state, in short, retained jurisdiction to levy the tax. Nor is the federal government unconstitutionally burdened. The tax is not laid on the government, its property, its officers, or any of its instrumentalities. It is a non-discriminatory tax on a private, independent contractor. The Chief Justice reviewed at length the numerous cases relevant to the issue under consideration and reached the conclusion that the tax may be upheld since it does not impose "substantial burden" upon the federal government. This is in line with the Court's doctrine in the Gerhardt case limiting tax immunity and opening up a field of non-discriminatory intergovernmental taxation. Mr. Justice Roberts filed a dissenting opinion in which Justices Butler, McReynolds, and Sutherland concurred. The dissent rests on the orthodox rule that there must be no taxation by a state which burdens the exercise of federal delegated powers, and that this tax immunity is necessary to protect our dual system of government. The theory is restated and defended that the immunity of government instrumentalities from taxation is "absolute in form," and that to allow the test of burden to supplant the earlier rule of complete immunity breaks down one hundred years of precedent.

A somewhat similar problem was presented in Atkinson v. State Tax Commission of Oregon.[88] Can a state income tax be levied upon the net income derived from work carried on on the Bonneville Dam under contract with the United States? The Court, in a *per curiam* opinion,

[88] 303 U.S. 20, 1938.

held that it could be. The rule of Metcalf v. Mitchell[89] clearly established the liability to income taxation of those carrying on work for the government under contract. As in the preceding case, the Court held that the state had not relinquished its soverignty over the land upon which the dam is being constructed, but has retained territorial jurisdiction for purposes not inconsistent with the exercise by the federal government of its functions.

In Silas Mason v. Tax Commission of Washington,[90] the question was presented whether the state could impose an occupation tax on the gross income of the appellant, who is working under contract with the United States on the Grand Coulee Dam. The case follows essentially the same lines as James v. Dravo Contracting Co.,[91] and the decision of the Court upholding the tax is reached by the same five-to-four division. On the authority of the James case, the Court held that no unconstitutional burden is imposed on the federal government, and that here also the state has reserved sufficient jurisdiction over the land upon which the dam is being built to permit it to exercise its power to tax.

IV. INTERSTATE COMPACTS

The case of Hinderlider v. La Plata River and Cherry Creek Ditch Company[92] involved the validity of an interstate compact between Colorado and New Mexico, consented to by Congress, relating to the division of water rights between the two states. The appellee, a Colorado corporation, owns a ditch through which it diverts water for irrigation. Its right to do so dates back to early state laws. Colorado state engineers, administering the provisions of the interstate compact, shut off the water from the company's ditch. In an opinion by Mr. Justice Brandeis, the Court held the compact valid and applicable. The two states were constitutionally empowered to adjust their interstate controversies regarding the use of the water of the river by entering into a compact, instead of settling them by judicial methods. A compact so entered into is binding upon the citizens of the two states, even with respect to water rights granted by those states before the compact.

[89] 269 U.S. 514, 1926.
[90] 302 U.S. 186, 1937.
[91] *Supra*, note 85.
[92] 304 U.S. 92, 1938.

The Personnel Structure of French Cabinets.[1] Since over 80 new ministers have entered French cabinets subsequent to the period covered in a previous article in this REVIEW,[2] the figures supplied therein may well be brought down more closely to date. During the 805 months between February 19, 1871, and March 13, 1938, 434 persons, under-secretaries excluded, have formed the 106 *separately appointed* or *reappointed* councils of ministers.[3] The question as to how many *different* cabinets France has had under the Third Republic may be left to metaphysicians. Almost every newly-appointed *Conseil* contains a large percentage of those who served in its predecessor. Cabinets which resign upon the election of a new president of the Republic are frequently reappointed *in toto*. Some cabinets have served for only a few days. While it is still convenient to do so, another metaphysical question may be begged—the date of the consolidation of the Third Republic. Rather general agreement upon the year 1879 makes it convenient to state that from March, 1879, to March, 1938, 375 persons have held cabinet positions. Forty-one of them have held the premiership and the important ministries of foreign affairs and finance for two-thirds of the entire period; the ministries of war and marine for half the period; the interior portfolio for almost half; and other ministries for considerable tenures. These 41 may be said to constitute the personnel structure of cabinets under the Third Republic.

The extent of their influence upon the major movements in governmental policies under the Third Republic has undoubtedly been great, but accounts of it must be reserved for treatment upon another occasion. Meanwhile it can be indicated that the 41 fall into "generations," at least in terms of their entrance into cabinet positions, with considerable overlapping from one generation to another. The generation of 1879

[1] This article was made possible only by assistance supplied the author in the form of a Social Science Research Council fellowship (1929–30), a grant from the University of Missouri Research Council (1938), and much painstaking investigation by Mr. Dell G. Hitchner in files of the *Journal Officiel*.

[2] "The Personnel of French Cabinets, 1871–1930," in the issue of May, 1931, pp. 389–396.

[3] The cabinets and their personnel have been compiled from appointments recorded in the files of the *Journal Officiel*. The cabinets mentioned below have been counted twice, although, save for one change of personnel in one of them when reappointed, the personnel remained exactly the same: Dupuy cabinets (30 May 1894–27 June 1894; 1 July 1894–14 Jan. 1895); Dupuy cabinets (1 Nov. 1898–18 Feb. 1899; 18 Feb. 1899–12 June 1899); Rouvier cabinets (24 Jan. 1905–18 Feb. 1906; 18 Feb. 1906–7 Mar. 1906); Briand cabinets (21 Jan. 1913–18 Feb. 1913; 18 Feb. 1913–18 Mar. 1913); Millerand cabinets (20 Jan. 1920–18 Feb. 1920; 18 Feb. 1920–23 Sept. 1920); and the Laval cabinets (27 Jan. 1931–13 June 1931; 13 June 1931–14 Jan. 1932). Some, but not all, cabinets resign upon the election of a new president of the Republic and are usually reappointed.

CABINET TENURES—MARCH, 1879, TO MARCH, 1938

	Prem.	*F. A.*	*Fin.*	*War*	*Mar.*	*Int.*
André				54		
Barbey					34	
Barthou	8	9		13		26
Besnard de Guitry					35	
Billot				38		
Briand	61	110				21
Caillaux	6		86			6
Chautemps	11					33
Cheron			16			
Clemenceau	59			26		40
Cochery			41			
Combes	31					31
Constans						54
Daladier	9			35		
Delcassé		97			21	
Flandin	7	4	16			
Freycinet	49	35		63		
Germain-Martin			24			
Hanotaux		43				
Jaureguiberry					33	
Klotz			53			8
Lanessan					35	
Laval	21	17				12
Leygues	4	4			92	11
Maginot				54		
Monis	4				6	4
Painlevé	9		1	60		
Pelletan					31	
Peytral			30			
Pichon		86				
Picquart				33		
Pietri				3	28	
Poincaré	77	40	43			
Regnier			12			7
Ribot	19	41	40			3
Rouvier	20	9	89			
Tardieu	16	3		1		25
Thompson					45	
Tirard	17		40			
Viviani	17	2				
Waldeck-Rousseau	35					60
Totals:	480	500	491	380	360	341
Total Months	708	708	708	708	708	708

Additional ministerial tenures of the 41 are: Justice: 183 months; Public Instruction: 126; Public Works: 124; Commerce: 76; Agriculture: 62; Labor: 59; P. T. T.: 57; Colonies: 39; Pensions: 20; Budget: 10; Air: 10; Commerce and Industry: 9.

includes de Freycinet, Rouvier, Billot, Waldeck-Rousseau, Constans, Jaureguiberry, and Tirard. That of 1894 embraces Leygues, Delcassé, Poincaré, Caillaux, Barthou, Cochery, Monis, Combes, Hanotaux, Peytral, André, Besnard de Guitry, Lanessan, Ribot, and Barbey. In 1906, or thereabouts, Briand, Picquart, Klotz, Pichon, Clemenceau, Viviani, Pelletan, and Thompson began their tenures. Painlevé, Maginot, and Cheron are the World War newcomers; and the post-war group includes Chautemps, Daladier, Flandin, Laval, and Tardieu. A new generation will form itself of those whose participation began around 1929, but only Germain-Martin, Pietri, and Regnier seem to be indicated at present. A basic reason for the present unsettlement is that, on the average, new ministers were recruited at the rate of six a year down to 1930, whereas the rate since has been ten a year. Upon the occasion of a cabinet crisis during Briand's long tenure as foreign minister, *Le Journal* carried a cartoon depicting a journalist seeking the advice of a clairvoyant as to the composition of a new council of ministers. "I see in Foreign Affairs," replied the crystal-gazer offhandedly, "Aristide Briand." It is doubtful whether even an oracle could forecast the future tenures of that current cabinet-maker, Mr. Léon Blum.

Laying asides aside, it is necessary to raise and answer the very serious question concerning intermittent tenures of individuals in cabinets under the Third Republic. In spite of their impressive total tenures, few of the 41 have remained ministers continuously for a period of four and one-half years.[4] The intermittency of cabinet tenures can be seen typically in the case of Rouvier. His tenures as minister of finance ran to a total of more than seven years, but he held the position for the first time in 1887, and relinquished it for the last time only in 1905, and he remained a parliamentarian from 1876 until his death in 1911.

If it could be established that the more successful French ministers are specialists, and that when they were not ministers they served on parliamentary commissions whose legislative specialization was parallel or closely related to their ministerial specialization, the seemingly baffling problem of intermittent cabinet tenures would largely lose its serious character and the personnel structure of cabinets would have a deeper significance. It is certainly not true that prominent personalities are removed from participation in power simply because they are dropped

[4] Joseph-Barthélemy and Paul Duez, in *Traité de droit constitutionnel* (Paris, 1933), p. 719, have compiled a list of eight who have this distinction, but they have included Dujardin-Beaumetz, who was only an under-secretary, and have counted Mougeot's under-secretaryship previous to his becoming minister. M. Ruau, on their list, was minister of agriculture exclusively, and is not among the 41 mentioned above. Of the 41 included here, therefore, only Barthou, Briand, de Freycinet, Delcassé, and Cochery served long continuous terms.

from a ministry. It would not be erroneous to say that in certain instances persons have wielded greater power in French government while members of commissions than while ministers. In April, 1938, for example, the leadership of Joseph Caillaux as president of the Senate's Finance Commission resulted in the rejection of Premier Blum's request for emergency financial powers, Blum's resignation, and the formation of the Daladier cabinet.

In order to conserve space, the complete parliamentary-commission and ministerial careers of only 10 of the 41 ministers can be listed in detail. Each of the 10 served a total of at least five years in a single cabinet position.

Several explanations may be supplied to make possible a proper interpretation of the careers presented below. Among the many usages controlling the operation of French government is that which calls for the resignation of members of standing commissions when they enter the council of ministers.[5] This statement, however, is acknowledged to be both too blunt and too indefinite.[6] The *Journal Officiel* carries no record of resignations from parliamentary commissions. Recorded in its pages are only the replacements occasioned by resignations. These are included in the listing below. Since the presumption is that the Chamber of Deputies is the more important of the two branches of Parliament, all commission memberships listed are memberships in commissions of that body unless specifically labeled "(Senate)." Further to save space, the contents of *projects* and *propositions* of law for which commissions have been appointed are indicated only when they appear to the author to be relevant to the matter of ministerial and commission specialization. All commission appointments are listed under the year in which the appointments were made. For the period since 1920, only appointments to grand commissions are mentioned.

Since studies of French government usually encounter difficulties as to source material, it may not be inappropriate to indicate a rather serious obstacle to the attainment of precision here. It is frequently impossible to determine when the term of a special commission expired, and the same difficulty occasionally arises in connection with standing commissions.[7] Before the establishment of a system of grand commissions in the Chamber of Deputies in 1902, independent grand commissions,

[5] Joseph-Barthélemy, *Essai sur le travail parlementaire et le système des commissions* (Paris, 1934), pp. 63–64.

[6] Joseph-Barthélemy calls attention to "tardy" resignations which occasion no loss of membership in parliamentary commissions—provided the new cabinet has only a short tenure. There is no indication in the *Journal Officiel* that members of commissions on either *projects* or *propositions* of law ever resigned because of appointment to the council of ministers.

[7] The *Journal Officiel* carries no notice of the expiration of committees.

and special commissions as well, were not necessarily terminated before the end of a Chamber of Deputies. The Senate being a continuous body, it was discovered in 1920 that one Senate commission had attained the age of thirty years![8] Save for the Chamber Budget Commission, which has always served for one year only (with the exception of the period 1915–20), the permanent grand commissions were not limited to a one-year term until 1920. The grand commissions of the Senate, established in 1921, with the exception of the Commission on Customs, are limited to one-year terms. The difficulties attending the determination of some commissions' terms of service and the impossibility of precision throughout made it appear advisable simply to list appointments to commissions and to indicate dates on which members were replaced. This procedure at least supplies the minimum terms of commission service.

1. ARISTIDE BRIAND (1862–1932), was educated in law at the University of Paris. He was elected to the Chamber of Deputies in 1902, and became Minister of Public Instruction, Fine Arts, and Cults in March, 1906, He was premier for the first time in 1909. After being both Minister of Justice and Minister of the Interior for several terms, he took over the portfolio of Foreign Affairs in 1915, holding no other thereafter. He was not a member of the Chamber foreign affairs commission previous to his first term as Minister of Foreign affairs.

President of the Council of Ministers and Minister of Foreign Affairs: 29 Oct. 1915–17 Mar. 1917.
1920: Commission on Foreign Affairs.
President of the Council of Ministers and Minister of Foreign Affairs: 16 Jan. 1921–12 Jan. 1922.
1922: Commission on Foreign Affairs.
1923: Commission on Foreign Affairs.
1924: Commission on Foreign Affairs.
1925: Commission on Foreign Affairs.
Minister of Foreign Affairs: 17 Apr. 1925–22 Nov. 1925.
President of the Council of Ministers and Minister of Foreign Affairs: 28 Nov. 1925–20 July 1926.
Minister of Foreign Affairs: 23 July 1926–30 July 1929.
President of the Council of Ministers and Minister of Foreign Affairs: 29 July 1929–3 Nov. 1929.
Minister of Foreign Affairs: 3 Nov. 1929–14 Jan. 1932. (Died: 7 March 1932.)

2. JOSEPH CAILLAUX (1863–), was also educated in law at Paris. A profes-

[8] R. K. Gooch, *The French Parliamentary Committee System* (New York, 1935), p. 98. This excellent study summarizes the facts on the duration of commissions, pp. 96–104.

sor, general councillor and inspector of finance, he served in the Chamber of Deputies from 1898 until 1919. In 1920, he was deprived of all political rights by a decision of the Senate, sitting as High Court of Justice. In 1924, he was given an amnesty and his rights were restored on January 1, 1925, in which year he was elected to the Senate. His ministerial tenures, with one exception, were in the Ministry of Finance.

1898: Four Commissions: Colonies, *projet* and *propositions* on financial legislation.

1899: Two Commissions: Fiscal Legislation (Vice-Pres.) and a *projet* (Sec'y and *Rapporteur*).

Minister of Finance: 22 June 1899–3 June 1902.

1902: (21 June): Two Commissions: Fiscal Legislation and on *projets* of taxation.

1903: Five Commissions: Budget (Vice-Pres.), Octrois (Pres.), Leaves of Absence, Liquor Legislation, and *projets* on budget *règlements*.

1904: One Commission: Leaves of Absence.

1906: One Commission: Budget (Replaced: 1 Dec. 1906).

Minister of Finance: 25 October 1906–20 July 1909.

1910: Three Commissions: Budget, *projet* on opening and annulment of credits for 1909–10 (*Rapporteur*), inquest on financier Rochette.

Minister of Finance: 2 Mar. 1911–23 June 1911.

President of the Council of Ministers and Minister of Interior and Cults: 27 June 1911–10 Jan. 1912.

1913: One Commission: Foreign Affairs (Replaced 13 Dec.).

Minister of Finance: 9 Dec. 1913–2 June 1914.

1914: One Commission; Foreign Affairs, Protectorates and Colonies.

1917: One Commission: Budget.

(Deprived of political rights: 1920-25).

Minister of Finance: 17 Apr. 1925–29 Oct. 1925.

1926: Foreign Affairs and Protectorates (Senate).

Minister of Finance: 24 June 1926–20 July 1926.

1927: Finance (Senate).

1930: Army (Senate).

Minister of Finance: 1 June 1935–7 June 1935.

(*Journal Officiel* of 1936 last one consulted.)

3. THEOPHILE DELCASSÉ (1852–1923), also educated in law, chose the profession of journalist. In 1889, he was elected to the Chamber of Deputies. He entered the cabinet as Minister of Colonies in 1894. His career as Minister of Foreign Affairs extends through the period 1898–1915. It was broken only twice during the years 1911–14, when he held the portfolios of Marine and War. He had no service on the Chamber commission on foreign affairs prior to 1906.

Minister of Foreign Affairs: 28 June 1898–7 June 1905.

1905: (Dec.) One Commission: Local Interest.
1906: One Commission: Foreign Affairs, Protectorates and Colonies.
1907: One Commission: on the Iena catastrophe (Pres.).
1909: One Commission: Inquest on the Marine.
1910: One Commission: Marine Commission (Pres.).
(Replaced on 22 Mar. 1911).
1911: One Commission: Petitions.
Minister of Marine: 2 Mar. 1911–10 Jan. 1912.
Minister of Marine: 14 Jan. 1912–17 Jan. 1913.
1914: Three Commissions: Foreign Affairs, Protectorates and Colonies, Army (Replaced on both: 23 Jan. 1915), and Parliamentary Initiative.
Minister of War: 9 June 1914–12 June 1914.
Minister of Foreign Affairs: 26 Aug. 1914–29 Oct. 1915.
(Died: 21 Feb. 1923.)

4. CHARLES DE SAULCES DE FREYCINET (1828–1923), was educated at the École Polytechnique. Elected to the Senate in 1876, he began his cabinet career in 1877 as Minister of Public Works. His terms as Minister of Foreign Affairs were served during the years 1879–86. During the remainder of his ministerial career, he was Minister of War exclusively, save for a brief period as Minister of State in 1915. From his entrance into the Senate in 1876 until the date from which the details of his career are presented below, his ministerial and commission tenures were either parallel or related.
Minister of War: 3 April 1888–14 Mar. 1890.
President of the Council and Minister of War: 17 Mar. 1890–18 Feb. 1892.
Minister of War: 27 Feb. 1892–10 Jan. 1893.
1894: Four Commissions: Army (Pres.), and *projets* on sanitation of Paris and the Seine, to open credits to Ministers of War and Marine for Madagascar expedition, and *proposition de loi* (Senate).
1895: One Commission: Army (Senate).
1896: Five Commissions: including Army (Pres.) (Senate).
1897: Two Commissions: including Army (Pres.) (Senate).
1898: Three Commissions: including Army (Pres.) (Senate).
Minister of War: 1 Nov. 1898–6 May 1899.
1900: One Commission: Army (Pres.) (Senate).
1901: One Commission: Army (Pres.) (Senate).
1902: Four Commissions: including Army (Pres.) (Senate).
1903: One Commission: Army (Pres.) (Senate).
1904: Two Commissions: including Army (Pres.) (Senate).
1905: One Commission: Army (Pres.) (Senate).
1906: One Commission: Army (Pres.) (Senate).

1907: One Commission: Army (Pres.) (Senate).
1908: One Commission: Army (Pres.) (Senate).
1909: One Commission: Army (Pres.) (Senate).
1910: One Commission: Army (Pres.) (Senate).
1911: Two Commissions: including Army (Pres.) (Senate).
1912: One Commission: Army (Pres.) (Senate).
1913: One Commission: Army (Pres.) (Senate).
1914: One Commission: Army (Pres.) (Senate).
1915: Two Commissions: Army (Pres.) and Foreign Affairs.
(Replaced on both: 19 Nov. 1918) (Senate).
Minister of State: 29 Oct. 1915–8 Dec. 1915.
(Died: 14 May 1923.)

5. GEORGES LEYGUES (1858–1933), was educated in law at Toulouse and Bordeaux. Elected to the Chamber of Deputies in 1885, his first cabinet portfolio was that of Public Instruction and Fine Arts. Becoming Minister of Marine for the first time in November, 1917, he was, with the short exceptions of being Foreign Minister from Sept. 1920–Jan. 1921 and Minister of the Interior, Dec. 1930–Jan. 1931, Minister of Marine exclusively thereafter. His membership in chamber commissions shows no navy commission service prior to 1920.
Minister of Marine: 16 Nov. 1917–18 Jan. 1920.
1920: Two Commissions: Foreign Affairs, Protectorates and Colonies Navy (Pres.)
President of the Council of Ministers and Minister of Foreign Affairs: 24 Sept. 1920–12 Jan. 1921.
1921: Two Commissions: Foreign Affairs (Pres.) and Navy
1922: Two Commissions: Foreign Affairs (Pres.) and Navy
1923: Two Commissions: Foreign Affairs (Pres.) and Education and Fine Arts.
1924: Two Commissions: Foreign Affairs and Education and Fine Arts.
1925: Two Commissions: Foreign Affairs and Education and Fine Arts.
Minister of Marine: 28 Nov. 1925–21 Feb. 1930.
Minister of Interior: 13 Dec. 1930–27 Jan. 1931.
Minister of Marine: 3 June 1932–2 Sept. 1933.
(Died: 2 Sept. 1933.)

6. PAUL PAINLEVÉ (1863–1933), was educated at the École Normale Supérieure and became a celebrated mathematician. Elected to the Chamber of Deputies in 1910, his first portfolio was that of Minister of Public Instruction. He began to serve as War Minister in 1917, and with the exception of one month as Finance Minister in 1925, and less than a year as Air Minister, 1930–33, all his other cabinet tenures were confined

to the War Ministry. He held membership in the Chamber's Commission on the Army in 1910, 1911, 1912, and 1914.
Minister of War: 20 Mar. 1917–12 Sept. 1917.
President of Council of Ministers and Minister of War: 12 Sept. 1917–13 Nov. 1917.
1920: Two Commissions: Army and Education and Fine Arts.
1921: Two Commissions: Foreign Affairs and Navy.
1922: One Commission: Army.
1923: One Commission: Foreign Affairs.
President of the Council of Ministers and Minister of War: 17 Apr. 1925–29 Oct. 1925.
President of the Council of Ministers and Minister of Finance: 29 Oct. 1925–22 Nov. 1925.
Minister of War: 28 Nov. 1925–14 June 1926.
Minister of War: 21 July 1926–3 Nov. 1929.
1930: Two Commissions: Foreign Affairs and Army.
Minister of Air: 13 Dec. 1930–27 Jan. 1931.
Minister of Air: 3 June 1932–31 Jan. 1933.
1933: Two Commissions: Foreign Affairs and Air.
(Died: 29 Oct. 1933.)

7. STEPHEN PICHON (1857–1933), was educated in medicine in Paris, but abandoned its practice for journalism. Municipal councillor, he was elected to the Chamber of Deputies in 1885, and became a senator in 1906. His entire ministerial career was served as Minister of Foreign Affairs. He was in the French diplomatic service from 1894 until 1906.
Minister of Foreign Affairs: 25 Oct. 1906–27 Feb. 1911.
1911: Two commissions: Finance (*Rapporteur* on Foreign Affairs) and *projet* on questions between France and Belgium in the Congo (Senate).
1912: Two commissions: Army and Finance (*Rapporteur* on Foreign Affairs and Protectorates) (Replaced 30 Mar. 1913) (Senate).
1913: Three Commissions: On creation of a Commission on Foreign Affairs and Colonies (Replaced: 16 May). Parliamentary Initiative and to Approve Convention with Spain over Riff empire (Senate).
Minister of Foreign Affairs: 22 Mar. 1913–2 Dec. 1913.
1915: Three commissions: Foreign Affairs (Vice Pres.) (Replaced: 24 Nov. 1917), Petitions, and Creation of Commission for Foreign Affairs (Senate).
1916: Two commissions: Army (Replaced: 24 Nov. 1917) and Petitions (Senate).
Minister of Foreign Affairs: 16 Nov. 1917–18 Jan. 1920.

1920: Committee on Leave of Absence (Senate). (Nervous breakdown 1920.) (Died: 18 Sept. 1933.)

8. RAYMOND POINCARÉ (1860–1934), was also educated in law. He was deputy, 1887–1902; senator, 1902–13; president of the Republic, 1913–20; and returned to the Senate in 1920. He began his career as Minister of Public Instruction, Fine Arts, and Cults. Minister of Finance in 1893, he returned to Public Instruction in 1895, but the remainder of his ministerial career was in the two ministries of Finance and Foreign Affairs. His parallel commission tenures began in 1890.

Minister of Finance: 14 Mar. 1906–19 Oct. 1906.

1907: Two commissions: Finance (*Rapporteur General*), and *projets* on foreign affairs (Replaced: 5 Mar. 1913) (Senate).

1908: One commission: Finance (*Rapporteur General*) (Senate).

1909: Four commissions: Finance, Leaves of Absence, Petitions on *projet* on taxation (Replaced: 10 Feb. 1912) (Senate).

1910: Finance Commission (*Rapporteur* on Foreign Affairs) (Senate).

1911: Two commissions: Petitions and Finance (*Rapporteur* on Foreign Affairs and Protectorates) (Replaced 3 Feb. 1912) (Senate).

President of the Council of Ministers and Minister of Foreign Affairs: 14 Jan. 1912–17 Jan. 1913.

(President of the Republic: 1913–20.)

1921: Foreign Affairs, Colonies and Protectorates (Pres.) (Senate).

President of the Council of Ministers and Minister of Foreign Affairs: 15 Jan. 1922–1 June 1924.

1925: Foreign Affairs, Colonies and Protectorates (Senate).

1926: Foreign Affairs, Colonies and Protectorates (Replaced) (Senate).

President of the Council of Ministers and Minister of Finance: 23 July, 1926–12 Nov. 1928.

President of the Council of Ministers: 23 July 1928–30 July 1929.

1930: Foreign Affairs and Protectorates.

1931: Foreign Affairs and Protectorates (Senate).

1932: Foreign Affairs and Protectorates (Senate).

1933: Foreign Affairs and Protectorates (Senate).

1934: Foreign Affairs and Protectorates (Senate).

(Died: 15 Oct. 1934).

9. MAURICE ROUVIER (1842–1911), was educated in law. He was elected to the National Assembly in 1871, became deputy in 1876, and passed to the Senate in 1903. After two terms as Minister of Commerce, he became Minister of Finance in 1887. Only at the end of his ministerial career, in 1905, did he take a different post—that of Minister of Foreign Affairs. His specialization in finance is shown in the chronology of his appointments to parliamentary commissions and in his ministerial tenures. Be-

ginning in 1876, he was continuously a member of the Chamber's Budget Commission until his first term as Finance Minister in 1887.

President of Council of Ministers and Minister of Finance, Posts and Telegraphs: 30 May 1887–4 Dec. 1887.

1887: Budget Commission. President, Budget Commission. (Appointed 6 April 1887, and replaced 25 June 1887.)

1888: Budget Commission. President of Budget Commission.

Minister of Finance: 22 Feb. 1889–13 Dec. 1892.

1893: Two commissions, including Budget Commission.

1894: Budget commission.

1896: One commission: *projet* on prorogation of privilege of Bank of France.

1898: Three commissions: Budget Commission, and *projets* of financial legislation.

1899: One commission: Budget Commission.

1900: Two commissions: Budget Commission and Commission on Petitions.

1901: Budget Commission.

Minister of Finance: 7 June 1902–18 Jan. 1905.

President of Council of Ministers: 24 Jan. 1905–18 Feb. 1906.

Minister of Finance: 24 Jan. 1905–17 June 1905.

Minister of Foreign Affairs: 17 June 1905–18 Feb. 1906.

President of Council of Ministers and Minister of Foreign Affairs: 18 Feb. 1906–7 Mar. 1906.

1906: Finance Commission (Senate).

1907: Finance Commission (Senate).

1908: Finance Commission (Senate).

1909: Finance Commission (Pres.) (Senate).

1910: Finance Commission (Pres.) (Senate).

1911: Leaves of Absence (Senate).

(Died: June 7, 1911.)

10. PIERRE-MARIE-RÉNÉ-ERNEST WALDECK-ROUSSEAU (1846–1904) was also educated in law. He served as deputy from 1879 to 1889. Not a candidate in 1889, he entered the Senate in 1894 and was reëlected in 1897. His only ministerial position was that of Minister of the Interior.

1879: Five commissions: two *projets* and three *propositions*.

1880: Three commissions: all on *propositions*.

1881: Five commissions: three *projets* and two *propositions*.

Minister of Interior: 14 Nov. 1881–27 Jan. 1882.

1882: Five commissions: one *projet* and four *propositions*.

Minister of Interior: 27 Feb. 1883–30 Mar. 1885.

(Not in Parliament 1889–94.)

1898: Two commissions: Petitions and *projet* (Senate).
President of the Council of Ministers and Minister of Interior and Cults:
22 June 1899–3 June 1902.
1903: One commission (Senate).
(Died: 10 Aug. 1904.)

The first requisite for a continuous rôle as a national figure in French politics is continuous local political success.[9] The political records of the 10 are outstanding. Once elected to the Chamber of Deputies or Senate, none was ever defeated thereafter. Save for Caillaux, deprived of political rights 1920–25, Pichon, in the diplomatic service 1894–1906, Poincaré, president of the Republic, 1913–20, and Waldeck-Rousseau's failure to stand as a candidate 1889–94, all 10 remained parliamentarians throughout their careers. Only four—Briand, Delcassé, Leygues and Painlevé—remained deputies. De Freycinet alone was a senator from the beginning to the end of his parliamentary and ministerial career. It is altogether probable that fears regarding reëlection to the Chamber of Deputies induced Caillaux, Poincaré, Rouvier, and Waldeck-Rousseau to move from the Chamber to the Senate.

Seven of the 10 men began their legislative careers while young, four starting before the age of thirty. Year after year, with rare exceptions, they sat on legislative commissions, acquiring greater knowledge of their specialties and learning from time to time the art of wielding the powers of a minister. Chamber and Senate elections always returned them to Parliament, although hundreds of their legislative colleagues were defeated. Yet none of the 10, and very few of their biographers, describe their local relationships or their campaign strategy and technique. Living French politicians tell no tales, and deceased ones leave no written tales behind them.

But the records of services in parliamentary commissions and in the council of ministers are both written and official. That record appears to reveal a fairly close and continuous specialization. In the case of Rouvier, the record of specialization is almost perfect. He sat on budget and finance commissions for 24 years—or for practically his entire legislative career except for his cabinet tenures, and his ministerial career shows 88 of a total 104 months in the Finance Ministry. At the other extreme is Waldeck-Rousseau. There is no close parallel between his ministerial and commission careers. But his entire career was rather exceptional. A deputy for only 10 years, he spent more than two of the 10 years in cab-

[9] The number of newly-elected deputies is comparatively large in France, particularly when changes are made in the electoral laws. The proportion of such deputies, in percentages, runs as follows: in 1885, 49.2; in 1889, 46.2; in 1893, 36.8; in 1898, 36.1; in 1902, 33; in 1906, 26.3; in 1910, 34.5; in 1914, 31.6; in 1919, 59.1; in 1924, 44.5; in 1928, 50.1; in 1932, 34; and in 1936, 44.2.

inets. During his period of commission service, there was no standing parliamentary commission which paralleled the Ministry of the Interior. In the course of his nine years in the Senate, he was Minister of the Interior for three years. Newly-elected senators must serve an apprenticeship before they are given important committee assignments, and Waldeck-Rousseau died shortly after his long term as premier and Minister of the Interior.

Generalizations as to the specialization of the other eight ministers would require more space than is available here, but one grand conclusion may be set forth. The commission service and ministerial careers of all approach more nearly the specialization of Rouvier than the seeming lack of specialization of Waldeck-Rousseau.

This conclusion is heavily supported by the specialization shown in the parliamentary-commission and cabinet services of a majority of 31 ministers whose careers cannot be set forth in detail here. Three of the 31—André, Besnard de Guitry, and Picquart—were non-parliamentarians. They were specialists of another type, but, not being members of Parliament, they served on no commissions. Sixteen of the 28 who remain were specialists in the sense that they usually held membership in parallel or related legislative commissions while not in cabinet positions. These 16 are Barbey, Billot, Cheron, Clemenceau, Cochery, Combes, Constans, Jaureguiberry, Klotz, Lanessan, Maginot, Peytral, Pietri, Ribot, Thompson, and Tirard.

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Armaments and the French Experiment.* Resort to armed force as an instrument of national policy, though often outlawed and denounced by common consent, seems as inevitable today as ever before. When the Covenant of the League of Nations was adopted, it was agreed "that the manufacture by private enterprise of munitions and implements of war is open to grave objections" (Art. 8, Sec. 5). Shortly after, on September 10, 1919, 28 nations assembled at St. Germain-en-Laye and Paris to sign a Convention for the Control of the Trade in Arms and Ammunition. This was followed by a conference to consider the draft of a new convention which was called by the League and met in Geneva on May 4, 1924. The adoption of the Arms Traffic Convention the following year was hailed everywhere as a signal victory. Studied preparations for a world conference went forward with crusading zeal. In 1930, a Draft Convention was deposited, and for its consideration a conference met and deliberated

* This paper forms part of a larger study on "France in the Rôle of Entrepreneur and Manager." See *infra.*, note 13.

from February, 1932 onwards.[1] By 1934, when 12 ratifications or accessions out of the required 14 had been deposited, strong hopes were entertained that the day of the final adoption of the draft was approaching. President Roosevelt strongly urged ratification by the Senate.

What has happened since requires no repetition. The concerted action of the peoples of all nations, needed to curb the private manufacture of arms and munitions and the traffic therein, has never been realized. In the words of President Roosevelt, "this serious source of international discord and strife"[2] remains. Indeed, it has since been strengthened beyond reason or hope of arrest. An armament race became inevitable.

Currently, attention has been called to industrial mobilization and preparedness plans in case of war to which the United States might find itself a party. Thought has been given to the need for somehow lessening, if not altogether eliminating, the "conversion lag" which necessarily appears between peace-time and war-time production. Preliminary to such plans, the suggestion has been made that war-materials production be taken over by the government. Inception of the idea is found in the 1934–36 activities of the Senate, caused by the publication of an article entitled "Arms and the Men" in the March, 1934, issue of *Fortune*, which in some detail portrayed the financial interlockings, the political ramifications, and the propaganda activities of the armament magnates and their underlings.

"So long," declared Senator Borah, "as the munition manufacturers exercise the influence which they now wield with governments, we shall make little progress in reducing armaments or holding navies down to a reasonable program." He suggested either "government manufacture of armaments," that is, nationalization of war industries, or "adoption of a policy of licensing under which the government could control the amount of armaments built and when and to whom they might be sold."[3] A resolution offered by Senators Nye and Vandenberg and passed on March 12, 1934, created a special committee of seven, under the former's chairmanship, *inter alia* "to inquire into the desirability of creating a government monopoly in respect to the manufacture of armaments and munitions and other implements of war and to submit recommendations thereon."[4] By February 6, 1936, 35 volumes of hearings and other evidence had been given to the public, the final report appearing on June 19, 1936.[5]

[1] See John W. Wheeler-Bennett, *The Disarmament Deadlock* (London, 1934), *passim;* also J., "Arms Manufacturers and the Public," *Foreign Affairs*, Vol. 12, p. 642 (1934). [2] *Congressional Record*, 1934, p. 9095.

[3] *Id.*, pp. 3688–3689. [4] *Id.*, pp. 6476–6477 and 6896.

[5] *Munitions Industry; Hearings Before the Special Committee Investigating the Munitions Industry, United States Senate, 1934–1936*, Parts 1–35.

Senator Nye was convinced that the only way to prevent international conflict was to take the profits out of war.[6] A majority of the committee advocated outright government ownership of sufficient plant capacity to supply the army and navy, with the exception of aircraft, which was thought to be still in the experimental stage.[7] The minority favored only rigid government regulation, as against nationalization or outright operation of armament plants, fearing that such operation would result in costs of production far in excess of those in private establishments, would inevitably lead to local political pressure—the curse of American politics—to maintain the plants at full capacity regardless of actual defense needs, and as a result would encourage rather than discourage armaments.[8]

The introduction of a number of bills in Congress followed, all designed to take the profits out of war. The measures ranged from protecting from inflation our economic organization in war-time and financing the conduct of war out of current revenue to subjecting industrial management, as well as man-power, to conscription. But none was enacted into law. On the contrary, this nation-wide movement against armaments and munitions-makers ended "in proposals to help the country, as the War Department states [in its 1936 *Annual Report*] 'to pass properly and smoothly to a war footing,' as well as to establish a dictatorship bearing more severely on the press and labor than on industry."[9]

Following the American effort to probe into the activities of munitions-makers and dealers, the British government set up on February 19, 1935, a Royal Commission on the Private Manufacturing of and Trade in Arms, with a view to ending excessive war profiteering. The resulting report, far from being as spectacular and voluminous as its American counterpart, was given out on October 31, 1936. Though at the time causing a good deal of apprehension, the commission opposed nationalization, dismissing the argument as "purely speculative in character and unsup-

[6] See William O. Scroggs, "The American and British Munitions Investigations," *Foreign Affairs*, Vol. 15, p. 324 (January, 1937).

[7] *Query:* Was it only a coincidence that the French were at almost the same time taking action along the same lines? See *infra*, pp. 285–286.

[8] Judging from reports concerning the operation of the U. S. Naval Aircraft Factory, the only government agency engaged in building airplanes in this country, such fears are not fully substantiated. As an illustration, it is reported that parachutes costing from $200 to $225 when bought from private plants are being built by the NAF at a cost of only $100. The maximum personnel under normal conditions is 1,875 workers, although this could be expanded to 8,000 or 10,000 without much difficulty. In size and efficiency, the NAF compares favorably with the leading private manufacturing plants in the country. See Lawrence E. Davies, "Navy Builds Own Plants," *N. Y. Times*, May 8, 1938.

[9] Harold Tobin and R. L. Buell, "Can War Profits be Eliminated?," *Foreign Policy Reports*, Vol. 13, No. 2 (April 1, 1937), p. 28.

ported by evidence." It was satisfied to recommend merely the restriction of profits of armament firms in peace-time to a reasonable scale.

Concurrently, the French went ahead with plans of their own. Their experiment is both timely and instructive. What follows is a brief summary of the pertinent legislation "*sur la nationalisation de la fabrication des matériels de guerre*," and a commentary on the extent of its enforcement, or rather its non-enforcement, both from the internal French point of view and internationally.[10]

The Popular Front. The French Revolution of 1789 proclaimed and established in France many basic principles for society and politics. High among these must rank the revolutionary decree of March 2/17, 1791 (Art. 7) proclaiming the inalienable and indestructible right of all persons "to pursue such trade and practice such profession, art, or industry as they should find convenient." Barring measures of national safety, the citizens of the new Republic were assured of absolute freedom in their pursuit of happiness.[11]

Soon, however, an exception was found necessary. The law of September 23, 1791 (Art. 1) declared that "the manufacture and sale of explosives shall continue to be exploited *en régie* on behalf of the nation." And such manufacture and sale of explosive powders of all kinds for all purposes have ever since been administered under a state monopoly,[12] which

[10] For full discussion of the measure in the Chamber of Deputies, see *Journal Officiel*, 1936, pp. 1930–45, 1986–2001, and 2604–5. It was passed by a vote of 487 against 68. For the ensuing discussion in the Senate, see *id.*, pp. 743, 1099–1115, and 1118–27. It was approved without a record vote. For other decrees, etc., mentioned hereinafter, see either *id.*, pp. 8674–5, 8834, 8888–9, 8967–9, and 11813–4, or Recueil Sirey, *Lois., etc.*, 1936, Vol. 36, NS, pp. 406–7, 436–7, 455–6, and 462–4. See also André Morillot, Paul Coroze, and Emmanuel Morand, *La Nationalisation des Usines de Guerre*, Supplément au Bulletin Quotidien (Paris, 1937)—a sketchy analysis of the organic law.

[11] As reiterated a century later by the U. S. Supreme Court, speaking through Justice Bradley, in Butchers' Union Slaughter-House and Live-Stock Landing Company v. Crescent City Live-Stock Landing and Slaughter-House Company, 111 U.S. 746 (1884) at p. 762: "The right to follow any of the common occupations of life is an inalienable right; it was formulated as such under the phrase 'pursuit of happiness' in the Declaration of Independence . . . . This right is a large ingredient in the civil liberty of the citizen."

[12] The law of 1791 has repeatedly been amended and supplemented. Under decrees of November 13, 1873, and July 12, 1876, as amended, a Special Consultative Committee for Powders was organized and a *Service des Poudres et Salpêtres* was instituted for their exploitation under the Department of War, Sixth Division. A law of March 8, 1875, as supplemented by Art. 33 of the law of finance of April 29, 1926, established "*un monopole d'état absolu, sans aucune dérogation.*" See an interesting study by Eugéne Simon, *Le Monopole des Poudres et la Dynamite en France* (Paris, 1933).

eventually was extended to cover tobacco, matches, alcohol, and petroleum.[13]

A further limitation upon the principle of the law of March 2/17, 1791, was enacted in 1936, when the parties of the Left first came into power in a united front.[14] Still carried along by the fervor and enthusiasm of their remarkable victory at the polls, the *Front Populaire* took a momentous step, that of bringing an issue everywhere debated into the realm of reality. One of the first acts put through Parliament was the nationalization of munition plants in France. When the bill, passed in the Chamber, was introduced in the Senate, it was declared to be, "by its object, certainly the gravest of all bills initiated since the beginning of the new legislation [of the *Front Populaire*]."[15]

By nationalization was meant that the state should expropriate and take over the management of vast war industries. This was highly desirable from many points of view; it had figured very prominently in the pre-election campaign of the united parties of the Left. War profiteering and economic maladjustment were the twin evils at which the new government under M. Léon Blum struck. *Les deux cents familles* became the battle cry of the victorious doctrinaires within and without the French Parliament against the moneyed oligarchy that had ruled the country since the World War.[16]

[13] To exploit an enterprise *en régie*, an act of Parliament in most cases is necessary. This creates a legal monopoly, the so-called *monopole de droit*, under which the state openly engages in the exclusive production and distribution of a particular commodity. Further on *régies*, see this writer's "Ownership, Management, and Regulation of Electric Undertakings in France," *George Washington Law Review*, Vol. 6, pp. 305–307 (March, 1938).

[14] This new form of the people's government was aptly described as "A government of the Workers, by the Intellectuals, for the Bourgeoisie [which] Keeps the French Republic from the Fascist Earth," in "Background of War: IV, Le Front Populaire," *Fortune*, Vol. 15, p. 82 (June, 1937).

[15] Senator Henry Lémery, *Journal Officiel*, August 7, 1936, p. 1108.

[16] How true this is, and how phenomenal this complete transformation of the social strata in France, was succinctly described in a contemporaneous study as follows: "France has entered the World War an industrialized middle class nation of many property-owners, many woolen stockings, many billions c hoarded gold francs, and many small family businesses. The great trusts, which are the natural product of free capitalism, were numerous and powerful, but not so powerful as they were to become. . . . France emerged from the war a nation of trusts and big business monopolies ruled by a financial oligarchy heading up in the *Banque de France*. . . . By the middle of 1922, $7,500,000,000 had been spent by the government to rebuild these plants [of the devastated areas] and restore the 13,000 ravaged square miles . . . the money was found by sales of bonds and by borrowings from the *Banque de France* . . . [the] consequence was the entrenchment in power of the great corporations which were in a position to take advantage of the boom." *Fortune, loc. cit.*, p. 83.

The reform of the *Banque de France* was finally accomplished, though not without bitter clashes with entrenched wealth. But expropriating extensive plants manufacturing war materials did not mean simply substituting state commissioners for private directors. This was an altogether different and much more complicated problem, unless an outright confiscation in the Soviet manner was to be sanctioned. It required appropriations running into many millions of francs; indeed, the Ministry of War had estimated the compensation which would have to be paid the dispossessed manufacturers at more than a billion francs—and this only for a start. Such appropriations had to be voted by Parliament and financed by new sources of revenue.

Nationalization. The nationalization of munition plants and factories in France was authorized by the law of August 11, 1936. The legislators sought to establish two principles: first, "a strict prohibition of all profits of war, and notably such profits as were likely to result in time of war from the manufacture of armaments"; and second, "the absolute right of the state, and the need for it, to control in the strictest fashion and during peace-times the manufacture of materials of war."[17]

The first principle was incorporated in Article 1, which reads as follows: "Before March 31, 1937, decrees issued by the Council of Ministers, on the initiative of the Ministers of National Defense and War, Navy, and Air, shall pronounce the expropriation, total or partial, of any enterprise engaged in the manufacture or commerce of materials of war."

The law did not authorize unlimited expropriation of munition factories. The power to expropriate was to be temporary; it could not be exercised by the Council of Ministers alone after April 1, 1937, and it has by now expired. In the meantime there has been only partial and insignificant exercise of the power of nationalization. The reasons are primarily financial. The *Front Populaire* cabinets of both Blum and Chautemps failed to avail themselves fully of the opportunity; they were unable to obtain the necessary credits for a complete expropriation, for the simple reason that they could not find new sources of revenue to tap. The national debt was mounting to new heights; the annual budget was regularly showing a deficit approaching the breaking point. And where would it all end? What other key industries, like iron, steel, aluminum, cotton, should also come under public ownership and control? What proportion of the manufacturing plants in peace-time is war industry, and what proportion in war-time is not war industry?

Of necessity, then, the law was enforced sparingly,[18] being left on the

[17] Deputy Fernand-Laurent, *Journal Officiel*, 1936, p. 1930.

[18] See John C. DeWilde, "The New Deal in France," *Foreign Policy Reports*, Vol. 13, p. 144 (September 1, 1937); also *Le Populaire*, "Organe central du Parti Socialiste," which published a list of the nationalized factories on June 4, 1937, at p. 4.

statute-books to mark an attempt, not to signify the beginning of a well conceived plan brought to full fruition. How far the French were able to go is difficult to state with any precision, for complete and up-to-date figures are lacking. Such information as is available dates as far back as October 1, 1937, when the budget was under discussion in Parliament.

Excluding aircraft construction, the total appropriations authorized for nationalization amounted to 400 million francs, of which 200 millions were voted in 1936, and the other 200 in 1937. Actual disbursements amounted to 66 millions in 1936, and 119,529,330 in 1937, leaving a balance of unused credits of 214,470,670 francs. The following plants have gradually come under government ownership and management:

Name	*Decree of expropriation issued on*	*Arbitration agreement reached on*	*Indemnity payable in francs*	*Payments on account in francs*
Mans (formerly Manurchin)	Oct. 28, 1936	May 7, 1937	46,265,000	39,978,900
Issy-les-Moulineaux (formerly Renault)	same	none	5,421,661	1,000,000
Vernon (formerly Brandt)	same	June 22, 1937	82,500,000	51,000,000
Caen (formerly Normandie)	Dec. 15, 1936	none	23,500,000	13,550,430
Levallois (formerly Hotchkiss)	same	being arbitrated	—	25,000,000
Havre (formerly Schneider)	Feb. 13, 1937	none	—	40,000,000
Creusot (formerly Schneider)	Mar. 11, 1937	being arbitrated	—	15,000,000
Saint-Priest (formerly Société d'Etudes)	same	same	—	—
Total payments made on account:				Frs. 185,529,330.[19]

Not all of the production departments of these companies are in government hands today; for most are extensive manufacturing concerns catering to the metallurgical trade as a whole. In addition to the sections manufacturing arms and other implements of war, these companies maintain quite elaborate units producing general machine lines. Thus, Hotchkiss, one of the largest manufacturers of rifles and machine guns in France, also produces automobiles; Saint Chamond and Schneider-Creusot make guns, but also manufacture a complete line of steel products. The government made a distinct division of the two types of products, and has taken over the munitions and machine units alone.

[19] Paul Bernier, "Rapport de la Commission des Finances (Defense Nationale)," *Chambre des Députés*, July 7, 1937, pp. 121–123.

Concerning aircraft manufacture, a different view was taken. In the course of the debate preceding the vote of August 11, 1936, Parliament was assured that the government would not expropriate aircraft construction plants indiscriminately; it would merely assume supervision and control in the management through financial participation. What this industry needed most, it was argued, was a combination of independent initiative and design with healthy financial assistance. Private initiative, it was emphasized, should be allowed to carry on with as little state supervision and technical interference as possible. In the words of the *rapporteur* of the Senate Air Commission, Senator Farjon: "An industry like that of aëronautics in manifest evolution, in from day to day modification, should enjoy, if its progress is desired, a condition of the greatest freedom, which obviously cannot be found in the same degree in agencies more or less institutionalized (*étatisés*), with very narrow administrative formulas and an extensive control."[20]

The industry, therefore, was regulated in its entirety as a separate unit apart from arms and munitions. The country was subdivided into six districts: West, South West, North, South East, Center, and South; for each district a separate and independent public corporation was created; and finally, all plants were administratively classified into four sectors: (1) the sector of arsenals, government-owned and operated; (2) the sector of civil manufacture for private plants; (3) the sector of study and research, for the technical improvement of the industry; and (4) the sector of parts and motors, under a mixed management, the state owning the majority of stock.[21] In the latter case, the government has been the sole customer, since commercial aviation in France is concentrated in one large company, the Air France, under a mixed management.[22]

Further, under a decree issued on January 16, 1937, especially applicable to aircraft enterprises, the state was authorized to acquire not less than two-thirds of their shares, through a friendly sale, or a subscription, or an expropriation. Should its participation be "*inférieure aux deux tiers du capital social*," the law was made inapplicable.[23]

Regulation. The second principle established by the law of 1936, that of government control and supervision, was incorporated in Article 2, which reads as follows: "From the date of the promulgation of the present law, enterprises [engaged in] the manufacture or sale of materials of war . . . cannot operate, and the activities of their representatives or

[20] *Journal Officiel*, 1936, p. 1103. [21] *Id.*, pp. 1103–4.

[22] "France and War," *Business Week*, July 18, 1936, p. 40. See also Alexander Werth, *Which Way France?* (New York, 1937), reporting an interview with the then (*circa* November, 1936) Minister of Air, M. Pierre Cot, at pp. 348–351.

[23] *Infra*, p. 287.

agents of publicity cannot be pursued, except with the authorization of the state and under its control."

This article subjected all enterprises engaged in the manufacture and sale of arms, munitions, and implements of war, but not otherwise expropriated (including their agents and representatives) to a rigid and detailed government license and regulation. This is to be permanent, and covers not only existing enterprises, but all likely to be organized in the future.

The new system was further strengthened by two decrees promulgated on August 17 and 18, 1936. The first provided for licenses of manufacture to be granted for five years but revocable at will, and for information of all orders and sales furnishable to the Ministry of National Defense and War. The second decree organized an independent authority for the enforcement of the law, the so-called General Service of Coördination and Centralization, located at the Ministry of National Defense and War, and especially charged with (1) the approval, renewal, or rejection of all applications for a license for the manufacture and sale of arms, (2) the coördination of action by any other government agency concerned with armament factories, and (3) the collection of all statistical information likely to be sought by interested international organizations.

Whenever the state comes to the assistance of an enterprise to the extent of less than two-thirds of its capital, another decree issued on January 26, 1937 (other than that of January 16, 1937) was made applicable, by establishing an elaborate system of supervision and control. This consists of at least two government agents appointed on the board of administration of the enterprise, one to represent the Ministry of Finance as its economic adviser, and the other or others to represent the service departments of War, Navy, and Air as technical advisers. This was simply an amendment to the emergency decree-law of October 30, 1935, which deserves separate treatment, since its provisions find extensive application in the regulation of all munition plants in which the state has a financial interest.

The Emergency Decree of 1935. For many years, the French Parliament has been authorizing the government of the day to issue decrees having the force of law. Such decrees, improperly distinguished as *décrets-lois*, constitute what is commonly referred to as "government by cabinet-decree." They must be issued within a certain time, must show a certain connection with the subject to be dealt with, and must be submitted to Parliament for approval.

Mindful of the unbridled speculation in the franc, the law of June 8, 1935, authorized the government to take all appropriate measures by decree up to October 31, 1935. Upwards of 500 decrees were issued.[24]

[24] It is interesting to note that many of these decrees had not the slightest connection with the defense of the franc. Thus a reform in the law regarding maternal

And before the expiration of these so-called "*pleins-pouvoirs*," the decree of October 30, 1935, was promulgated, subjecting all societies, syndicates, and associations or enterprises in any manner or nature obtaining or having obtained financial assistance from the state through loans, conventions, guarantees, subsidies, or any other economic advantage, to a detailed supervision and regulation. This, a rather complicated procedure, may be summarized as follows:

On the board of administration of the enterprise so assisted a state commissioner is appointed with the power to veto any decision or plan likely to affect or prejudice the financial interests of the state. He acts under a compact, entered into between state and enterprise, the latter *inter alia* agreeing to operate, if not already doing so, as a *société anonyme*. Its accounts must always remain open to inspection and auditing by the General Inspection of Finances in the Ministry of Finance.

All state commissioners so appointed are placed under the jurisdiction of a special commission of a maximum membership of 12 in the same Ministry of Finance, given the power to examine and review all accounts and reports prepared by them, as well as by the enterprise itself. The commission's jurisdiction remains strictly financial. It intervenes for purposes of verification and orientation, and never acts as a commission of arbitration.

Finally, a yearly financial report is prepared by an accountant of the Court of Accounts, another administrative agency with quasi-judicial functions, reviewing the activities of the past and suggesting changes for the coming year or years.[25]

It should be emphasized that the decree of 1935 speaks of voluntary agreements between state and enterprises, and this provision has been reiterated in the decrees of January 16 and 26, 1937, already discussed. That is, whether the state's participation amounts to more than two-thirds of the shares of an enterprise (decree of January 16, 1937), or less than two-thirds (decree of January 26, 1937), it must not be imposed from above. It must be solicited by the enterprise itself, acting within its by-laws or its charter. This provision of the law is clear and mandatory.

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authority was brought about by such a decree issued on October 30, 1935. The explanation must be found in the fact that the then government of Laval availed itself of the "special powers" to issue decrees which, though not regulating the monetary system, were considered urgent enough to justify the procedure. It should be noted, however, that once such decrees are submitted to, and ratified by, Parliament, their irregularity, if any, ceases. See a note by Gaston Jéze, "Le contrôle juridictionnel des décrets-lois," *Revue du Droit Public et de la Science Politique*, Vol. 54, pp. 501–505 (1937); also an amusing account in George Peel, *The Economic Policy of France* (London, 1937), pp. 188 ff.

[25] This provision has been supplemented by the decree of August 25, 1936. See Jean-Bernard Aubert, *Les Sociétés d'Economie Mixte* (Paris, 1937), pp. 182–192.

Yet there has been at least one instance where the government forced its participation, and thus automatically assumed control in the management.

On May 4, 1937, i.e., after the expiration of the law of 1936, it was decreed that the state should accord its financial assistance to the *Société des Moteurs Gnome et Rhône* of Paris, organized and licensed to manufacture and sell materials of war, mostly airplane motors, to the extent of 100 ordinary shares to be purchased in the open market. There was neither a voluntary demand nor any other agreement between this enterprise and the state. Would a similar authorization for the acquisition of as little as one share of any enterprise justify a state share in its management? Could such an acquisition be considered "financial assistance or participation" by the state, in the sense that the decree-law of 1935 presupposed and the decrees of 1937 endorsed? Both questions should be answered in the negative.[26]

Conclusion. It has been seen, first, that only partial and limited nationalization of war industries has taken place in France under the law of 1936; second, that the provision of the law establishing the system of license and regulation has been prosecuted most vigorously, not so much for taking the profits out of war, as for coördinating the manifold problems of national defense; third, that the state's share in the management of all enterprises financially assisted by appropriations has been strengthened; and finally, that commercial aviation operates under a mixed management, while most of the aircraft manufacturing plants are operated by the state, either as sole proprietor or as majority owner.

What course will the French government probably follow in the future concerning the armament industry? Will it decide to take over all munition plants and operate them as state property *en régie?* Or will it be satisfied simply to share in management and eventually exert the strictest control possible? From what has occurred since the law was first put on the statute books, the conclusion is warranted that further nationalization has been postponed, if not entirely abandoned. The evidence both from the domestic point of view and internationally is overwhelming. And first as to the domestic situation.

When the Blum government first came into power on June 4, 1936, the economic and social situation in France was anything but reassuring. The internal debt, standing as of February, 1936, at 333 billion francs and consuming almost 35 per cent of the total income, was menacing. The gap between revenues and expenditures was ever widening, the state absorbing all the earnings of the country for its own unproductive

[26] See Gaston Jèze, "Le régime juridique des entreprises de fabrication ou de vente de matériels d'armament," *Revue du Droit Public et de la Science Politique*, Vol. 54, pp. 469–470 (1937).

use, with the result that no new capital was available for private enterprises. To make matters worse, the Popular Front social legislation, though long overdue, and the ever present sit-down strikes, however inevitable, tied up production considerably and nearly ruined foreign trade. The franc was in full flight.

A partial explanation of this situation is found in the recurrent deficits of the annual budget, an exceptionally large part of which was claimed for national defense expenditures. And these items have been the least controllable; for *pour la patrie* is a slogan conjuring up particularly to Frenchmen visions of unsurpassed pride and fervor. Thirteen billion francs went to national defense in 1935; they were raised to fourteen and a half in 1936, and to nineteen in 1937.[27] When the 1938 budget was passed (on December 31, 1937), out of a total of 55 billion francs, the sum of 22 billions was set aside for the three service departments.[28] But this was not all. By November, 1938, public expenditures had reached the appalling sum of 137 billions, of which 25 billions were allotted to new armaments. The 1939 budget provides for national defense a total appropriation of 41 billions. Considering that the national income of France is now estimated to be approximately 250 billions, while ordinary revenues could hardly be made to bring in more than 85 billions, the inference is inescapable that for long now the French have been living beyond their means. Last year alone, the Treasury borrowed 48 billions.

This unhealthy economic situation has been further aggravated by the ministerial instability which has prevailed since the Blum cabinet first went out in June, 1937. Swiftly succeeding ministries have sought to rescue rather than control the situation. Upon assuming office last May, the Daladier government was forced further to devalue the franc, in the hope that at least part of the expatriated capital, then standing at almost 100 billions, would be attracted home. But only from 10 to 15 billions heeded the call.[29] In November, in another effort to pull France out of her economic morass, the newly appointed finance minister, Reynaud, issued a batch of 58 decree-laws, ranging in subjects dealt with from the price of white paper and tobacco to the conditions under which the government may borrow. Their aim was to improve the country's financial situation directly by cutting expenditures and increasing revenues, and indirectly by stimulating a revival in business which would in turn bring in larger tax receipts. Irrespective of the attitude of the divergent and ever individualistic groups within Parliament, three par-

[27] Paul Rives, "Rapport de la Commission des Finances (Air Defense)," *Chambre des Députés*, July 7, 1937, pp. 9, 86.

[28] *Journal Officiel*, 1938, p. 44. William T. Stone and Helen Fisher, "The Rising Tide of Armament," *Foreign Policy Reports*, Vol. 12, pp. 286, 292 (Feb. 15, 1937).

[29] *N. Y. Times*, May 12, 1938.

ticularly influential groups outside Parliament will consistently oppose any economies tending to affect their interests, as long as democratic institutions are maintained. The General Confederation of Labor, claiming a membership of five millions, has repeatedly voted to resist any attempts constituting "a suppression of the social reforms voted by Parliament"; the National Confederation of War Veterans, representing seven millions, has likewise scored such economies as "a super-sacrifice on those who have been the saviors of their country"; and the Federation of Syndicates of Fonctionaries, embracing more than a million public servants, stubbornly sabotages any schemes at their expense.[30]

But the problem of armaments has long ceased to be a local one. To be sure, in nearly every country public feeling has demanded that the profits be taken out of war, and many governments have taken the initial step of reducing armaments or regulating the sale of war materials.[31] The latter was especially true during the Italo-Ethiopian conflict when League members were applying sanctions against Italy. But that was before a whole chain of circumstances leading up to the Munich Agreement girdled the world. Today the race of "arming for peace" is on. The unexpected return to power politics has intensified production for national defense, even on this seemingly safe American continent.

Thus France finds herself dangerously near the parting of the ways. It is no longer a question as to how far her government is willing to go in the initial direction of socializing the industry of war. To the realization of that ideal, her Popular Front governments of 1936–37 brought her nearer than any other country.[32] But from the start, events in both the domestic field and the international arena have militated against success. Future developments, if any, will revolve around a more complete consolidation of production of war materials under a state control and management of the kind described above. French governments, without carrying nationalization farther afield, will seek to strengthen and coordinate the nation's forces for national defense, so far as is possible under a free economy. Any other experimentation must await a more propitious time.

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[30] *Ibid.*, November 15, 16, 17, and 23, 1938; also *The Times* (London), Dec. 29, 1938, p. 8. [31] *Supra*, p. 281.

[32] As a former premier, Edouard Herriot, once knowingly commented, "the Frenchman is a creature who finds it hard to do easy things, and easy to do difficult things." "The Future of French Democracy," *Foreign Affairs*, Vol. 12, p. 609 (1934).

NEWS AND NOTES

PERSONAL AND MISCELLANEOUS

Compiled by the Managing Editor

The thirty-fifth annual meeting of the American Political Science Association will be held in Washington, D. C., December 28–30, with headquarters at the Wardman Park Hotel. The committee on program, appointed by President Charles G. Haines, consists of Professors Harvey Walker, Ohio State University, chairman; Harold S. Quigley, University of Minnesota; George W. Spicer, University of Virginia; Francis G. Wilson, University of Washington; Benjamin F. Wright, Harvard University; and Hon. Charles West, U. S. Department of the Interior. The committee on local arrangements includes Dean Ernest S. Griffith, American University, chairman; Professors Herbert Wright, Catholic University; James F. Leahigh, Georgetown University; Robert A. Gooch, University of Virginia; Lawrence V. Howard, University of Maryland; Carl B. Swisher, Johns Hopkins University; C. I. Winslow, Goucher College; W. Reed West, George Washington University; and Drs. Lewis Meriam, Brookings Institution, and Henry Reining, Jr., National Institute of Public Affairs. A committee to nominate officers for 1940 has been named as follows: Professors Edwin A. Cottrell, Stanford University, chairman; Phillips Bradley, Queens College; Ralston Hayden, University of Michigan; Arthur N. Holcombe, Harvard University; and Robert R. Wilson, Duke University.

Dr. Eduard Beneš, former premier and later president of Czechoslovakia, is conducting a graduate seminar on democratic institutions at the University of Chicago during the spring quarter, and in addition is giving a series of lectures before the student body.

Professor Lindsay Rogers, of Columbia University, is in residence at the University of Chicago during the spring quarter on the Walgreen Foundation. Under the same auspices, lectures are being given also by Mr. Walter Lippmann.

Dr. Heinrich Brüning, chancellor of the German Republic from 1930 to 1932, has been appointed to the permanent position of Lucius N. Littauer professor of government in the Harvard Graduate School of Public Administration. He will assume his new position at the beginning of the next academic year.

Professor DeWitt C. Poole has resigned as director of the School of Public and International Affairs at Princeton University—a position which he has held since the School was established in 1932—and will be

succeeded in the autumn by Professor Dana G. Munro, chairman of the department of history.

Mr. Escott Reid, who since 1932 has been national secretary of the Canadian Institute of International Affairs, and who during 1937–38 was acting professor of government and political science at Dalhousie University, has been appointed to the staff of the Canadian legation at Washington as second secretary.

At the University of California at Los Angeles, Professor J. A. C. Grant is serving as chairman of the political science department during the current semester, in the absence of Professor Frank M. Stewart, who is engaged upon a history of the National Municipal League, with emphasis on the rôle of the organization in the municipal reform movement in the United States.

Professor Marshall E. Dimock is on leave from the University of Chicago for 1939 and has accepted appointment as second assistant secretary of labor. During the autumn, he acted as special assistant to the Secretary of Labor while making a study of the immigration and naturalization services.

Professor Milton E. Loomis, of New York University, has been appointed associate commissioner of higher education for the state of New York.

As Godkin lecturer, Dr. Robert Moses, New York City commissioner of parks, will give lectures at Harvard University on April 21 and May 12 on "The Essentials of Free Government" and "The Duties of the Citizen."

At the University of Alabama, Dr. Eric Voegelin, formerly of the University of Vienna, has been appointed assistant professor of political science for the year 1939–40.

In accordance with action taken at the Columbus meeting of the American Political Science Association, twenty gift sets of the REVIEW have been sent to China for distribution among colleges and universities which have suffered losses through the Japanese invasion.

Colonel George Scott Stewart has been appointed instructor in political science at the University of Pennsylvania.

At the University of Illinois, Drs. Valentine Jobst III, and Clyde F. Snider have been promoted to the rank of associate in political science.

Under the auspices of the state unemployment compensation division, Professor Lashley G. Harvey, of the University of New Hampshire, is this semester giving an extension course at Concord on social legislation.

Dr. W. T. Jordan, of Judson College, has been appointed visiting professor of history and political science for the 1939 summer session at John B. Stetson University.

Mr. Herbert Emmerich, associate director of the Public Administration Clearing House, recently gave a series of three lectures at the University of Chicago on certain aspects of governmental corporations.

Dr. Gabriel Almond, formerly a graduate student at the University of Chicago, has been appointed instructor in political science at Brooklyn College, and Mr. Robert Walker has accepted appointment as secretary of the Local Planning Committee of the National Resources Committee.

Mr. Lyman S. Moore, assistant director of training of the Institute for Training in Municipal Administration conducted by the International City Managers' Association, has been appointed consultant in public service training with the United States Office of Education. He will assist states in making plans for public service training programs designed to qualify for federal aid.

Mr. H. Clyde Reeves, formerly executive assistant and director of research in the Kentucky department of revenue, has been appointed state local finance officer and is devoting a large part of his time to the study of county finance. He has been succeeded as director of research by Mr. John St. John, formerly a member of the commissioner's staff in the state department of revenue.

Professor Edward B. Logan, of the University of Pennsylvania, was appointed state budget secretary by Governor James of Pennsylvania in January. He has been given leave of absence from his university post and has lately prepared the state budget for the 1939–41 biennium. From 1931 to 1934, Dr. Logan served in the same capacity under Governor Pinchot.

Political science courses in public finance are being conducted at the University of Pennsylvania during the second semester by Mr. Bernard G. Segal, formerly deputy attorney-general in charge of banking for the state of Pennsylvania and now associated with the law firm of Schnader, Lewis, and Segal in Philadelphia.

On December 8 and 9, 1938, Sir Herbert Ames, once a member of the Canadian Parliament and for several years financial secretary of the League of Nations Secretariat, delivered a series of three lectures at the University of Illinois under the auspices of the department of political science. The lectures dealt with aspects of modern Germany and the Czechoslovakian crisis.

Mr. Lewis B. Sims, who last June returned to the United States Civil

Service Commission from a resident consultantship at the Harvard Graduate School of Public Administration, has transferred to the Bureau of the Census, where he is technical assistant to the chief statistician in the Division of States and Cities.

On March 10 and 11, a Latin American conference was held at the University of Pennsylvania under the auspices of the political science department, with Dr. Samuel Guy Inman in charge. A series of round tables dealt with the proceedings and results of the Lima Conference.

Under the auspices of the Graduate Faculty of Political and Social Science, a symposium was held at the New School for Social Research on March 24–25 on the subject of "The Struggle for Economic Security in a Democracy."

A Citizens' Conference on Government, sponsored by the department of government management at the University of Denver and by the Sloan Foundation, will be held at Estes Park, Colorado, June 19–23. The general theme will be "The Rôle of Government in the Social-Economic Life of the Citizen."

The semi-annual meeting of the Academy of Political Science, which usually takes place early in April, has been postponed this year until May 3 in order that non-resident members who may be visiting New York for the opening week of the World's Fair may attend the Academy sessions. The general topic for the meeting will be "The Preservation of Democracy—America's Preparedness."

The department of political science at the University of Chicago has recently made arrangements for two joint appointments. Professor Simeon E. Leland has accepted such an appointment between the departments of economics and political science in the special field of public finance; and Professor Floyd Reeves has accepted a similar appointment between the departments of education and political science, with a view to giving special attention to general principles of education.

Dr. Rowland Egger, professor of political science and director of the Bureau of Public Administration at the University of Virginia, has been granted an indefinite leave of absence to permit him to accept appointment by Governor James H. Price as budget director for the commonwealth. This appointment is a part of Governor Price's program for the comprehensive reorganization of fiscal administration and executive management of the state government. Dr. Egger has been serving during the past year as the Governor's unofficial financial and administrative adviser. Dr. Raymond Uhl, assistant professor of political science and

assistant director of the Bureau, has been named acting director during the absence of Dr. Egger.

Pi Sigma Alpha, national honorary fraternity in political science, held its annual meeting on December 29 last at Columbus, Ohio, in connection with the sessions of the American Political Science Association. The following officers were elected for 1939–40: president, Herman G. James, Ohio University; vice-presidents, C. B. Gosnell, Emory University, C. W. Shull, Wayne University, and Arthur Steiner, University of California at Los Angeles; secretary-treasurer, J. W. Manning, University of Kentucky.

On January 31, President Roosevelt announced the appointment of a committee charged with making a comprehensive study of the methods of selecting personnel for professional positions in the federal service. The chairman of the committee is Mr. Justice Stanley Reed, and other members include Mr. Justice Felix Frankfurter, General Robert E. Wood, president of Sears, Roebuck and Company, and Professor Leonard D. White, of the University of Chicago.

With coöperation of the Institute of Citizenship (Atlanta) and the Georgia State Public Forums, the first annual Armstrong College Institute of Citizenship was held at Savannah, Georgia, on February 2–3, under the directorship of Dean J. Thomas Askew. Two addresses were given by Professor Cullen B. Gosnell, of Emory University.

The College of the City of New York has lately established a division of training for civil service in which, on the assumption that "the legislative and executive processes of government are generally known and understood by the average undergraduate college student," emphasis will be placed on training in matters related to the judicial process.

The program of the twelfth annual session of the Institute of Citizenship, sponsored by Agnes Scott College, Emory University, and the Georgia School of Technology, and held at Atlanta February 13–15, provided for sessions on county finance and training in public affairs; and Dr. Henry Reining, Jr., of the National Institute of Public Affairs, delivered an address on "What a School of Public Administration Can Contribute."

As a clearing-house of information on Japan, the Kokusai Bunka Shinkokai (Society for International Cultural Relations) of Tokyo has established at 630 Fifth Avenue, New York City, a Japan Institute under the direction of Mr. Tamon Mayeda. The Institute is said not to be concerned with controversial contemporary politics or political ideology, but only with furnishing objective data in response to inquiries relating to Japanese cultural, economic, and social life.

At Duke University, several symposia held in connection with the celebration of the one hundredth anniversary of Trinity College have dealt with governmental problems. A symposium held under the auspices of the Duke Medical School on October 13–15 included a discussion of the problem of socialized medicine. At a symposium held on November 17 and 18 on the general topic, "The Changing Economic Base of the South," former Premier van Zeeland of Belgium and Secretary of Agriculture Wallace were among the speakers. Professor Harold J. Laski, Senator Vandenburg, Mr. Walter Lippmann, and Dr. John Dickinson were among the speakers at a symposium on "Law and Modern Society," held under the auspices of the Duke Law School on December 2 and 3.

Under the auspices of the American Council of Learned Societies' Committee on Latin American Studies and the University of Michigan, an Institute of Latin American Studies will be held at Ann Arbor in connection with the 1939 summer session of the University of Michigan. Features of the program will include summer session courses, special lectures, and a number of round tables. Inquiries may be addressed to the director, Professor Preston E. James, 13 Angell Hall, Ann Arbor.

The theme of an Institute for Social Progress to be held at Wellesley College July 8–22 will be "How Can We Make Democracy Work?" Among round tables will be one on financing government, led by Mr. Benjamin C. Marsh, executive secretary of the People's Lobby in Washington; one on propaganda analysis, led by Mrs. Helen Meiklejohn; and one on the foreign policy of the United States, leader to be announced. Evening speakers will include Professor Max Lerner, of Williams College, and Mayor Harold H. Burton of Cleveland. Fuller information may be obtained from Miss Grace L. Osgood, secretary, 14 W. Elm Avenue, Wollaston, Massachusetts.

At the age of thirty-six, Dr. C. Walter Young died early in February at his home in Silver Spring, Maryland, of a rare lung disease contracted while he was in Manchuria for a decade prior to 1936 as a representative of the Institute of Current World Affairs. At the time of his death, he was an economist on the staff of the United States Tariff Commission; but he was best known as the author of a number of books on Sino-Japanese relations, notably *Japan's Special Position in Manchuria*, *Japanese Jurisdiction in the South Manchuria Railway Areas*, and *The International Legal Status of the Kwantung Leased Territory*, all published, with peculiar timeliness, in the year (1931) of the more immediate beginning of the Japanese operations in Manchuria which culminated in the establishment of the state of Manchoukuo. Dr. Young was a graduate of Northwestern University, and held advanced degrees from the University of Minnesota and the Johns Hopkins University.

The Anatomy of Revolution. By Crane Brinton. (New York: W. W. Norton and Company, Inc. 1938. Pp. 319. $3.00.)

This book is a comparative study of four revolutions: the English revolution of the 1640's, the American, the great French, and the post-war Russian revolutions. On the basis of an enormous amount of material and unusual acumen in comparing and contrasting facts, the author tries to elaborate the common pattern in origin, development, and termination of these four popular, democratic revolutions. In spite of his mastery of the data, Professor Brinton modestly emphasizes that he is studying only this particular type of revolution, and even within the limits of this particular type he does not intend to produce any final conclusions as to the essential significance of these vast upheavals.

Though he repudiates the extreme claims of the so-called natural-scientific approach as applied to the social sciences, in his whole procedure his attitude differs in no essential respect from those previous endeavors which have been stimulated by the claims of the natural scientist. The classic example of this type of research remains the monumental work of H. Taine, who stressed this allegedly scientific method so far as to assert that the social scientist can find no more cause for sympathy and antipathy in regard to crime and virtue than the chemist in regard to vitriol and sugar. And though Professor Brinton does not regard himself as a follower of the Frenchman, he has the same completely amoralistic attitude, scoffing in true "scientific" spirit at practically all values, whether liberal, socialist, Marxist, or what he calls in a rather deprecatory way "a good, evangelical Christian morality." And like his unacknowledged master, he too is captivated by some pathological traits of the revolutions and uses as a conceptual scheme the analogy of fever.

The author's point of view is near to the sociology of V. Pareto. He asserts that "we are not dealing with moral questions, not praising or condemning, but trying to arrange facts in a useful order." But any history which goes further than the simple enumeration of facts cannot do this in reality, because in order to select and coördinate facts we must necessarily judge them and determine their real position in the historical process. Similarly, we can understand neither the character nor the work of any leading personality without judging the man; that is, without knowing his significance in the totality of events.

No historian or social scientist can escape this logical necessity. The personal biases, for instance, of Pareto, are so manifest that it is almost comical to see how he installed himself on the throne of scientific objectivity. Nor can Professor Brinton escape this necessity. For example, speaking of the "lunatic fringe" of the revolution, he manifestly has a set

of values by which he can make such a distinction. Also, his tendency to explain the higher by the baser and to emphasize far more the lower aspects of our human nature (he is far more impressed by the poor dancing of Lafayette than by his idealistic character) shows already some predilection in his historical judgments.

It is even doubtful whether the author has really found the common type of revolution which he tried to establish. For instance, the present reviewer doubts whether the revolution of Cromwell fits into the general framework of the analysis. The author makes here a *tour de force*, disregarding its profoundly religious elements. It may also be questioned whether the American revolution, which was far more a fight of the colonies against England than a struggle for a new social order, would come within the category of popular, democratic revolutions. So the true analogy remains the one between the French and Russian revolutions. However, even here a fundamental difference is manifest, which the author strangely under-emphasizes; and this is the fact that the Russian revolution originated from the World War. Old Russia was not destroyed by the revolutionaries. It was destroyed by the total collapse of the Russian war machine and public administration.

These and similar distortions clearly show the merits and the defects of this work. As far as the factual analysis goes in comparing certain manifestations of the revolutions, Professor Brinton has accumulated most valuable data, for which every student of revolutions will be grateful, even on points where he disagrees. He is perpetually clever, challenging, and thought-provoking. But when we inquire about the relative significance of his facts and their connection with the transformation of human society, we are rather blinded than illumined by his kaleidoscopic inquiries. Nothing is primarily important, nothing is an essential accomplishment in all these events. There is no real qualitative difference in their results. The fever merely comes to an end, and perhaps the patient will be reinvigorated by the crisis. That is all. Professor Brinton himself feels that this is not enough, and he tries to mitigate his "blank skepticism" by the enumeration of some general truths, which are, however, of a nature familiar to middle-class gentlemen, and especially professorial gentlemen, before reading the book. Here again he is drawn to a conclusion analogous to that of his neglected master. When H. Taine was asked about the lessons which he drew from the studies of his whole life, devoted in large part to the French Revolution, he said that human society is an extremely complicated thing. This is very true, but one may ask whether such inquiries really clarify our outlook towards both the past and the present, and help us to understand the task with which the living generation is confronted.

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Freedom of Inquiry and Expression. By Edward P. Cheyney, editor, and Others. (Philadelphia: Annals of the American Academy of Political and Social Science. Volume 200. November, 1938. Pp. 306. $2.00.)

Once again the editors of *The Annals* have put every social scientist and literate layman in their debt by this timely volume on *Freedom of Inquiry and Expression.* Fourteen distinguished contributors discuss as many different aspects of the most important political problem of our time. Beginning with a "Short History of Freedom and Restraint," by Edward P. Cheyney, there follow chapters on "Restraints upon the Utilization of Inventions," by Bernhard Stern; "Freedom and Interference in Medicine," by Richard Shryock; "Freedom of the Newspaper Press," by Gerald Johnson; "Freedom of Expression in Literature," by Huntington Cairns; "Freedom in the Arts," by W. Rex Crawford; "Academic Freedom," by Henry Tyler and Edward P. Cheyney; "Freedom for the School Teacher," by Howard Beale; "Limitations on Freedom of Research and Teaching in the Social Sciences," by Edward Shils; "Freedom of Speech for Clergymen," by John Mecklin; "Freedom for Wage Earners," by Witt Bowden; "The German Universities and the Government," by E. Y. Hartshorne; "The Press and the Universities in Italy," by Max Ascoli; "Freedom of Artistic Expression and Scientific Inquiry in Russia," by Philip E. Moseley. A summary chapter by Professor Cheyney and an appendix containing "Tributes to the Ideal of Freedom of Expression," from Socrates to the United States Supreme Court, conclude the volume.

No more comprehensive nor, on the whole, satisfactory survey of this problem has appeared. There are, it is true, notable gaps, and not all of the topics are treated with equal power. Conspicuously absent are chapters dealing with restraints, both within the industry and from the outside, on radio broadcasting and motion picture production, although there are a few random references to these under other headings. At the risk of seeming disingenuous, several of the chapters may be singled out as particularly excellent and apposite.

The Senate committee investigating monopolistic tendencies in American economic life might do well to read Bernhard Stern's article on "Restraints upon the Utilization of Inventions," and one can only hope that leaders of the medical profession will read and take counsel of the admirable analysis by Professor Shryock of "Freedom and Interference in Medicine." In spite of its familiarity to the teaching profession, the material on "Academic Freedom," not only under that heading but in the chapters by Professors Beale and Shils, is presented with refreshing vigor and insight. Although the reader will find in them none of the pyrotechnics to be found in current anti-Communist and anti-Fascist tracts, the articles by Max Ascoli, Philip Moseley, and E. Y. Hartshorne

are for that very reason especially valuable. With calm detachment, but never with indifference, and with a temperate tone that is none the less plain-spoken, they reveal the gradual paralysis of intellectual and artistic life under dictatorship, whether of the Fascist, Nazi, or Communist variety.

Space forbids comment upon the many other admirable contributions in this volume. All point to the conclusion expressed in 1933 by the American Association for the Advancement of Science, when it declared: "We regard the suppression of independent thought and of its free expression as a major crime against civilization itself . . . there can be no compromise on this issue, for even the commonwealth of learning cannot endure 'half slave and half free.' By our life and training as scientists and by our heritage as Americans, we must stand for freedom."

PETER H. ODEGARD.

Amherst College.

The Culture of Cities. By LEWIS MUMFORD. (New York: Harcourt, Brace and Company. 1938. Pp. xii, 586. Maps. $5.00.)

In this work, and in his *Technics and Civilization*, Mumford must be classed with Spengler, Sorokin, and the other cosmic historians whose tremendously stimulating and challenging interpretations of the sweep of history furnish tough fodder for the minds of present-day mortals.

"The city, as one finds it in history, is the point of maximum concentration for the power and culture of a community." Taking this opening sentence as his text, in the first half of the book Mumford gives in succession four pictures—the medieval town, the "baroque" city, the "insensate" industrial town, and the contemporary megalopolis. Each of these is smoothly—perhaps too smoothly—interpreted as the natural expression of the culture of its age. It is the book's supreme merit—and perhaps suggestive to some of us political scientists—that at every point one is conscious of the continuity or oneness running through the culture of the age. Its government fits its social philosophy; its architecture harmonizes with its recreation; neither its religion nor its economic life is understandable apart from each other. Each and all of these are rightly pictured, not as segments, but as complementary facets of an internally unified system. Transitions from one age to another receive less mention; nor is there much by way of a theory of social change save an acceptance of the generalizations of Patrick Geddes, Mumford's acknowledged spiritual mentor.

Pictures of the medieval town have been legion, but I doubt whether any other has been as interesting, and few, if any, have been so flattering. The idealization of medieval civic activity is somewhat overdone—witness, for example, the picture of citizens taking their turns as watch.

On the other hand, most of the elements of this earlier culture furnish trenchant criticism of contemporary urban life, notably its closer relationship between the city and the surrounding region and the naturalness of active participation in civic affairs.

The baroque city—the capital city—was an expression of a nationalism which drained both wealth and political vitality from the rest of the nation. Its successor, the industrial town—black, unplanned, dehumanized—fostered a political life of shadow-boxing, if indeed there was left any such life at all.

The high point of cultural analysis comes in Mumford's devastating picture of contemporary life as expressed in and dominated by "megalopolis." It is the kind of picture which applies a ruthless scalpel to so many of our uncritically held economic and social major premises that no one can read it carefully without being far more disturbed than by any ordinary Jeremiad. Vested interests in land values and paper values are held primarily responsible for developing and desperately holding together the metropolis, long after its growth on any humanistic grounds should have ceased. Furthermore, these vast urban conglomerates are portrayed as economically and technologically wasteful, and biologically and politically decadent. One wishes that it were possible to have more confidence in Mumford's accuracy, as witness the glaring errors in his figures in per capita police costs (p. 267). Although comparatively little space is devoted to Mumford's largely implicit political theory, its importance should not be underrated. Mumford attributes the growth of dictatorship and war-mongering largely to megalopolitan culture. In passages of superb rhetoric, he pictures the metropolitan crowd—"a million cowards upon whose blank minds the leader writes: Bravery."

By itself, the sheer size of urban conglomerates scarcely suffices to bear the weight of the sins which Mumford loads upon it. Yet it is at this point that Mumford, perhaps by the very fact of his unconscious exaggeration, has done his most creative work. In isolating and analyzing this factor of size, he seems to have added something new and important to political theory. He accepts the contribution of Miss Follett's *New State* anent the vitality of the neighborhood as a political unit. This he fuses with an appreciation of the need for administrative manageability and a rounded, biologic, cultural life for the citizens, and proceeds to discuss the optimum urban size for political health. Moreover, this health is achievable only when accompanied by a restoration of intimate relationships with the surrounding countryside.

Following these conclusions, Mumford devotes the second half of his book to the blueprints of his utopia. Much familiar ground in the theory of regionalism is traversed in "The Politics of Regional Development," but with occasional shafts of insight and turns of thought which reveal

the fact that we are in the presence of a creative thinker. Language and race and tradition as factors making for nationhood are dismissed far too lightly; but dismissed they are, and the reader is left with the uncomfortable sense that perhaps family and region do in fact provide far more humanistic bases for the political as well as other aspects of life than do the existing fortuitous units.

The gap between utopia and the status quo is left unfilled, but utopia as a technique of criticism of a culture in its totality has seldom had a more skillful exponent than *The Culture of Cities*. The book is a great and terrible indictment of our existing culture and the forces making for its decay.

ERNEST S. GRIFFITH.

The American University.

Court Over Constitution; A Study of Judicial Review as an Instrument of Popular Government. BY EDWARD S. CORWIN. (Princeton: Princeton University Press. 1938. Pp. 273. $2.50.)

In this volume of essays and addresses, Professor Corwin emphasizes particularly the Constitution as the people's document. This note is evident throughout, but is particularly stressed in the reflective remarks in the concluding essay written with reference to the sesquicentennial. The Constitution must be a serviceable instrument of popular government, and in the mind of the author the high function of the Court is to see that the Constitution remains serviceable.

In his third essay, on "The Court as Moulder of the Constitution," Professor Corwin vigorously defends himself against the charge that he is unduly nationalistic in his views. On page 129, he says, with reference to the charge that the New Deal endangers both the states and individual rights, that this view is based in part upon a misapprehension. To quote: "As was pointed out in the preceding chapter, apropos of the Wagner Act Cases, liberty is something which often needs to be protected *by* government rather than *against* it, and when this is so the necessary extension of governmental authority cannot be deemed to be at the expense of liberty. And it is much the same with States Rights. Why should one shed tears over these when the facts show that the states are really in no position to exercise them at all effectively? And yet the States Rights which have yielded to recent extensions of national power in the industrial field have been almost exclusively of this type." In this essay, the author extols the possibilities of coöperation within the federal system through such devices as grants-in-aid. Throughout the essays, Professor Corwin reiterates his belief, doubtless shared by many students of public law and political science generally, that the government of the United States is one government with its powers distributed, rather than two governments with mutually antagonistic sets of powers.

The fourth essay, dealing with the Pollock Case, leaves the Court with little more to stand on than that it was badly out of touch with contemporary history and past history. The case really is dealt with as an object lesson in what the Court should not have done and should not do again.

The second essay considers the various methods whereby the Constitution is changed, but concentrates particular attention upon the function of the Court as the expositor and elaborator of the Constitution. The two chief points made by the author in this section of the book are that the practice of judicial review has emphasized the document as a protection of individual rights and that constitutional law is not so much the product of the document as it is the product of outside forces and ideas. With respect to these outside influences, the Court performs a highly selective function; and this is a thesis which Professor Corwin illustrates in considerable detail.

The first essay deals with the question of whether the framers of the Constitution intended that the Court should exercise the power of judicial review. The answer, concludes the author, is in the affirmative, after a fashion, providing that one understands that the framers had in mind a more limited judicial review than the Court has come to exercise. They intended that the Court should enforce the provisions restricting government, but not the provisions granting powers.

This volume, like the numerous others from the pen of Professor Corwin, is rich in historical material. But, as is so well illustrated in the opening pages of the first essay, the analytical materials are much more prominent and considerably more advanced than in most of his previous writings. The analysis of the scope of judicial review, of the distinctions between deciding cases, enforcing restrictions, construing grants, and giving general meaning to the documentary text, goes considerably beyond that to be found in most of the current literature. The emphasis placed upon giving the document general meaning is most suggestive. True, every case assumes a principle, but not always have the reader, the bench, and the bar seen the extent to which these principles, in addition to deciding cases, become constitutional generalities, although not designed primarily for that purpose.

The reviewer laid down this volume with the feeling that one of his eminent lawyer friends was correct when he confessed recently that the job of deciding constitutional cases was more the task of the political scientist than that of the lawyer. Perhaps the day will come when a statutory court of senior circuit judges, or something like it, will be handed over to the lawyers as the supreme court for private law while the present constitutional court will really be recognized for what it is, with an improved procedure, i.e., a constitutional court.

To end on a note relating to style: it should be said that the book seems not as well written as several of Professor Corwin's other volumes. Having discharged this obligation, the reviewer hastens to add that this does not mean that the book is difficult to read. It reads easily, but not as easily as Professor Corwin has made others of his books read.

OLIVER P. FIELD.

University of Minnesota.

The Contract Clause of the Constitution. By BENJAMIN FLETCHER WRIGHT, JR. (Cambridge: Harvard University Press. 1938. Pp. xvii, 287. $3.50.)

The contract clause of the Constitution has been more productive of litigation than any other positive limitation upon the powers of the states. During the last half-century, its importance has declined on account of the development of the due process clause. The principles established during the period in which the contract clause predominated were and are of significance, and an understanding of their historical development is essential.

Professor Wright's book provides an excellent medium for securing this knowledge and represents the results of careful study of the cases and the circumstances under which they arose, as well as of the influences that affected the decisions. More than that, it is an exposition of the judicial process that will be of value in considering the development of other provisions of the Constitution.

Part I, which includes approximately one-third of the volume, is devoted to "The Rise of the Contract Clause." So far as its origin is concerned, the limited discussions in the Constitutional Convention and during the period of ratification, taken in connection with economic conditions and contemporary views, lead to the presumption that it was intended to refer only to private contracts. There follows a well documented consideration of the way in which Marshall's domination of the Supreme Court led to the series of famous opinions in which the scope of the clause was widely extended. This was due not so much to his nationalistic views as to his conservatism and desire to protect property rights, an attitude which was in accord with prevailing opinion. Political party leaders, despite their differences on other matters, believed in the security of private property. This is shown in the discussion of the Taney period when the Court was largely composed of Democrats. With very few exceptions, the views of Marshall continued to be applied to the numerous cases involving the contract clause, and the safeguards to property rights were in general maintained throughout this period.

In the second part of the volume, there is first a chapter on the history of the contract clause since 1864. This period was characterized by the absence of further expansion of the scope of the clause, the development

of the police power, the smaller percentage of cases involving contracts between private persons, and, after several decades of continued increase in importance, by the steady decline in the proportion of cases involving the clause that came before the Court. The latter was due to the reservation by the states of the right to amend or repeal corporate grants, and to the expansion of the due process clause, which furnished a better method for protecting vested interests.

All of the remaining chapters, with the exception of the last one, deal with the application of the clause in the following classes of cases: contracts between private persons, regulation of corporations, tax exemption, powers which the states may not contract away, contracts between states and other governmental agencies, financial obligations of state and local governments, and impairment of contract by judicial decision. Emphasis is placed upon the factual situations involved in the legislation, the principles developed by the Court, and the social and economic effect of its decisions. Of particular interest is the discussion of debtors' relief legislation before and after the Minnesota Moratorium Case.

The final chapter, on "The Protection of Vested Rights in a Democracy," contains a summary of the process by which the contract clause became of so much greater legal and economic importance than was intended by the Fathers. This was not the result of arbitrary action of the Court, but was due to judicial interpretation of the political, economic, and legal thought of the period.

Professor Wright has dealt with his subject in an able and scholarly manner. The book is well documented, contains a table of cases cited, and will be of value to lawyers as well as to students of social, economic, and constitutional history.

ISIDOR LOEB.

Washington University.

Selected Papers of Homer Cummings. EDITED BY CARL B. SWISHER. (New York: Charles Scribner's Sons. 1938. Pp. xxvi, 316. $3.50.)

One of the valuable and lasting services of Attorney-General Cummings was his initiation of the elaborate study of the records of his department from which emerged the volume, *Federal Justice*, an historical record of the Department of Justice under the joint authorship of Mr. Cummings and Assistant Attorney-General Carl McFarland. There is no similar account of any other major executive department. It was natural that those closely associated with this major historical study should have felt it desirable to assemble some permanent record of the work of the department under the administration of Mr. Cummings. An elaborate history of so recent a period was neither practical nor appropriate, and what has been done in the *Selected Papers* is to publish, under the able

editorship of Carl B. Swisher, a selection from the papers of Mr. Cummings chosen to indicate the major activities and policies of the Attorney-General and the Department of Justice between 1933 and 1939. While his official and personal files were thrown open to the editor, Mr. Cummings himself had no share in the enterprise, and knew nothing about it until the published volume was presented to him at a dinner in his honor on the occasion of his retirement from office.

The papers used are admittedly a collection of samples drawn from the unwieldy masses of material available. They comprise "addresses, articles, letters and telegrams, reports, legal arguments, statements for the press, memoranda, briefs, opinions, orders, and testimony at legislative hearings." One of the purposes of the collection is to indicate the nature and value of the materials available for more elaborate historical investigation. The task of selection and of editorial comment and annotation has been performed skillfully. The net effect is to give the reader a concrete impression of the work of the department during six critical years, and to emphasize the diverse character of the responsibilities borne by the Attorney-General and his staff. The volume is a fitting memorial to Mr. Cummings, who, more than any one of his fifty-three predecessors, devoted his major energies to the task of improving the internal efficiency of the Department of Justice and of formulating for it a constructive program.

The papers are grouped into six parts. The first is called "The Nation's Largest Law Office," and deals generally with the functions and administrative structure of the Department of Justice. The second part, on "Crime Control," throws light upon the federal crime program enacted into law in 1934 upon Mr. Cummings' recommendation. There is comment on the problems relating to federal prisons, the rehabilitation of prisoners, and similar topics. Part III deals with "The Courts, the Constitution, and the New Deal," and portrays the vitally important work of the department in defending in the Supreme Court the statutes in which the New Deal program was embodied. A fourth part concerns "Reform of Federal Practice and Procedure" and gives the story of the important drive launched by Mr. Cummings for the revision of federal court rules. Through the efforts of a committee appointed and supervised by the Supreme Court, this has culminated in the establishment of the "consolidated, liberalized, simplified, and flexible" rules which became effective in 1938. Of great interest is Part V, which presents the Attorney-General's sponsorship of the President's court plan, for the general nature and form of which he is commonly supposed to have been largely responsible. Here also is Mr. Cummings' proposal, now before Congress, for the establishment of a separate administrative organization for the federal courts, which are now "administered" with respect to budget and

"housekeeping" functions by the Department of Justice. The final part deals with the major concrete functions of the department, describes the work of the chief divisions, and comments on the important problem of personnel.

The volume contains a brief biographical sketch of Mr. Cummings. The papers are woven into a coherent scheme and their significance effectively indicated by more than twenty notes by the editor into which is crammed historical and descriptive material of great value. Students of government should be grateful for this volume, brief as it is. It would be a fortunate thing if its publication should stimulate similar undertakings that would illuminate the work and policies of all of the major executive departments.

ROBERT E. CUSHMAN.

Cornell University.

The Public Works Administration. By JACK F. ISAKOFF. (Urbana: University of Illinois Press. 1938. Pp. 166. $1.50 paper, $2.00 cloth.)

In this scholarly and meaty monograph, the author sets for himself the task of analyzing "the functioning of the Federal Emergency Administration of Public Works, more commonly known as the Public Works Administration." Further, he notifies his readers that he is interested "chiefly in the organization and policies of the establishment as a problem in public administration"; that little consideration has been given to the "broader economic, political, and legal problems except as they conditioned the actual administration of the establishment's functions"; that the reader "will fail to find an analysis of the functions of public works expenditures in the economic order." The task, as delimited, is carried out with an amazing thoroughness, despite the failure of the P. W. A. to open up all the secrets of its work to the student. The author presents in successive chapters the general organization and functions of the P. W. A., its important administrative problems, its financing and allotments, its administrative policies, and in a recapitulatory chapter he plays the rôle of critic. In addition, there is an excellent bibliography.

The non-rational elements in the economic individual leads to a downward swing of the business cycle. Why could not a far-seeing rational national government provide by law for a planned public works construction program to counter such a swing? This is the theory embodied in the second portion of the great administrative statute of 1933, as supplemented, and known as the N. I. R. A. The inability of Congress to do more than write the general policy threw into the lap of the "most energetic" department of government—the executive-administrative—an initial sum of $3,300,000,000 and the whole duty of creating an entirely new administrative organization involving such important matters as

administrative centralization, deconcentration, state-local coöperation, personnel, efficient control, and many phases of specific policy. The end-result of organization, however changing its forms, always came down from and ran back to Ickes—Ickes and Company located at Washington. The expenditures, whether recapturable, as in loans to localities and "private public service" agencies, or outright grants, as to federal agencies and local units, were at the will of the President by and with the advice and consent of Mr. Ickes. Successive laws did attempt to stake out certain funds, but those that were unexpended or recaptured ran parallel under the different grants in a way that defied easy detection. However, the P. W. A. held to what its master considered the chief reason for its existence, namely, the feeding of oxygen to the heavy industries and the country's skilled labor. This left to the W. P. A. the task of exhibiting the humanitarian spirit of the New Deal by keeping alive the lowest one-third of the nation's population. To the reviewer, however, there is more than an analysis of the P. W. A. He sees running throughout the monograph flashes of insight into larger problems of government. There is the urgent need for administrative reorganization, as in the ice-jams caused by the Comptroller-General; the reaction of the central government upon the local units and the reverse; the permanent demand for a housing program (now provided for); the place of the National Resources Committee in American economy; the general problem of how much power should be delegated to the executive-administrative authority.

Finally, the author gives Mr. Ickes a "good character" for the work he has done through the P. W. A. He wishes to preserve this experience as against the future, and hesitatingly states that the P. W. A. will likely continue after 1941 in the form of a "staff agency of the Chief Executive, to function as a skeleton organization during ordinary times and as a major organization of government, with expanded force and with large appropriations, during times of emergency."

JOHN P. COMER.

Williams College.

Public Employment Service in the United States. By RAYMOND C. ATKINSON, LOUISE C. ODENCRANTZ, AND BEN DEMING. (Chicago: Public Administration Service. 1938. Pp. xiv, 482. $2.50.)

The public employment exchange in the United States has at last become a respectable government service. Except for the feverish work of the United States Employment Service during our brief participation in the World War, the public employment activities of the national and state governments prior to 1933 were sporadic, inconsequential, and, not infrequently, quite disreputable. The passage of the Wagner-Peyser Act

in that year, however, marked the beginning of a comprehensive federal-state employment system, and, with the subsequent introduction of unemployment compensation, the service rapidly developed into an important and integral part of the national social security program. It now emerges as a full-fledged member of the large and growing family of major governmental enterprises.

In this book, three students have examined the operation of the new public employment system since its inception in 1933. It is a large and difficult task, for which, fortunately, they are exceptionally well qualified. Mr. Atkinson is a recognized student of government, and Mr. Deming and Miss Odencrantz hold responsible positions in the administration of public employment work in Indiana and New York, respectively. Together, they combine the vision of the detached scholar with the practical knowledge of the administrator. The result is a balance and a comprehensiveness unusual, if not unequalled, among the many recent studies in the field of public administration.

In an introduction, Mr. Atkinson states the case for employment service as a public function, traces the rise of the present system, and considers the implications of unemployment compensation for the public employment service. Part II, written chiefly by Mr. Atkinson, is an examination of the principal problems of organization and administration with which the service has to deal. A strong argument is made here for the unified administration of unemployment compensation and public employment services. Part III is an analysis of employment service procedure; and Part IV contains six chapters dealing with the problems raised by the special employment cases, namely, the inexperienced, the hard-to-place, farmers, veterans, and persons on work relief. The bulk of the last two parts is a highly detailed treatment of the more technical aspects of administration. It is full of "shoulds" and "musts," and reads like a manual or handbook of standard administrative practice.

Many of the findings are necessarily tentative. It is shown, for example, that the effort to promote local lay participation in the public employment service has on the whole been a complete failure. Yet it obviously would be premature to consider this particular experience a final index of the possibilities for lay participation in the service at the local level. The whole program is, in fact, still in the formative stage. Unemployment compensation, around which the public employment service will have to be developed, will not reach full operation for some years to come. Unquestionably, the solution of this and most of the other major administrative problems that now confront the public employment service will have to depend largely upon experience which is yet to be acquired.

Whether the public employment service will in the long run be anything more than an adjunct of work relief and unemployment compensa-

tion is at present uncertain. If in the future the service can establish and maintain high standards of efficiency in its dealings with these allied activities, then it is reasonable to expect that private employers throughout the country will eventually utilize the public employment exchange as the principal medium of private placement. Toward such an objective, the service should be aimed and directed. Meanwhile, it would be wise for student and practitioner alike to read carefully this excellent account of the beginnings of an important new public undertaking.

PAUL T. STAFFORD.

Princeton University.

The Tennessee Valley Authority; A National Experiment in Regionalism. By CLARENCE LEWIS HODGE. (Washington: The American University Press. 1938. Pp. xii, 272.)

This study of the Tennessee Valley Authority is distinctive for its sound emphasis on the important governmental aspects of the Authority, but also, unfortunately, for its extensive "borrowing" from other published works and for its sparing use of quotation marks and footnote acknowledgments.

The borrowing is most evident when the text of the book is compared with the text of the National Resources Committee's report, *Regional Factors in National Planning and Development.* On forty-seven of the book's 248 pages of main text appear, without quotation marks or adequate acknowledgment of source, passages which are taken substantially word-for-word from the report. These passages are from one sentence to a page and a half in length, and are scattered throughout the volume. Of these excerpts, twenty-three are accompanied by no footnote whatever, and nine carry footnote references to original sources, e.g., statutes and hearings, but not to the report. The footnotes to the remaining excerpts mention the report, but list it as one of several sources to be consulted "for further details," or quote a passage not already used for the book's text, or say "See" the report. None of these types of treatment of the report seems to the reviewer to be adequate. Quotation marks are absent in all the cases cited, and such changes as were made in the passages are not sufficient to warrant a view that the author was paraphrasing the report. Of course, even a paraphrase should be footnoted. The author has also borrowed passages from other sources than this report—again without acknowledgment.

The scissors-and-paste technique of research employed, objectionable though it is, should not blind one to the merits which the book would have in a revised form. The volume is well organized, and its emphases are well chosen to underline interdepartmental and intergovernmental coöperation, selection of regional areas of administration, the rôle of the

lay agency in regional planning and development, and other matters of concern to political scientists. A surprisingly smooth style and an extensive bibliography add to the value of the book. The heavy reliance upon the 1935 report of the National Resources Committee is a point for criticism, particularly since the Tennessee Valley Authority is now over twice as old as it was when that report was published.

The author, having read an early draft of this review, has withdrawn his book from sale; and similar action has been taken independently by the American University as publisher. It is fair to state that the author evinced surprise at the reviewer's findings; and such surprise suggests the possibility that the offense committed may have been one of gross carelessness rather than of deliberate plagiarism. On the basis of the evidence, the reviewer is, however, convinced that this possibility is very remote.

JAMES W. FESLER.

University of North Carolina.

Debts and Recovery. By ALBERT GAILORD HART ET AL. (New York: The Twentieth Century Fund. 1938. Pp. xxvi, 366. $2.75.)

This is a study of changes in internal debt structure in the United States from 1929 to 1937, with "a program for the future." The factual findings were prepared by Albert Gailord Hart and the "program" by the Committee on Debt Adjustment—a committee consisting of J. Lionberger Davis, chairman, who is chairman of the board of the Security National Bank Savings and Trust Company, St. Louis, and seven other members—architect, accountant, lawyer, university economist, editor, investment banker, and life insurance company executive.

The introductory chapter discusses in summary fashion the magnitude of the depression debt changes, the causal relations between such changes and the depression, the "mythology" of debt maturities, the dangers to "liquidity," and the redistribution of income and property. The following chapters deal with the debt situations of credit institutions, particularly of commercial banks, building and loan associations, life insurance companies, and mutual savings banks; then with the debts of private individuals and unincorporated business, corporations, and government bodies. These factual presentations are followed by the findings and recommendations of the Committee on Debt Adjustment and by an appendix giving sources and fifty-eight supporting statistical tables.

The committee finds that: "Our debt difficulties were not the sole cause of the great depression, of course; nor was the depression the sole cause of our debt difficulties;" but our weak debt structure made it possible for the decline to go to such unprecedented lengths. Following

are brief summaries of specific recommendations of the committee: (1) legal requirements relating to investment institutions should be relaxed —for example, life insurance companies should be permitted to invest in common stocks; (2) new issues of government bonds should not be tax-exempt; (3) governments should discourage rather than encourage debt financing, as they now do, through income tax policy, regulation of utility rates, and control of local government debts; (4) there should be proper relations between debt maturity and asset life; (5) appraisal of underlying assets should be more systematic and objective; (6) existing mortgage moratoria should be tapered off as soon as business conditions justify; (7) further reform of normal debt adjustment procedure is needed; (8) further research is needed; (9) government emergency lending agencies should be liquidated gradually and others should be coördinated.

This is a valuable study, although some readers may think that not all of the recommendations are entirely justified by the facts presented.

ROY G. BLAKEY.

University of Minnesota.

The Social Services. By W. HARDY WICKWAR. (London: Cobden Sanderson. 1936. Pp. 268. 10s. 6d.)

The Public Services. By W. HARDY WICKWAR. (London: Cobden Sanderson. 1938. Pp. 243. 10s. 6d.)

The British Social Services. The British Health Services. (London: Political and Economic Planning. June, December, 1937. Pp. 210, 429.)

Public Health Services. By NORMAN WILSON. (London: William Hodge and Company. 1938. Pp. 244. 7s. 6d.)

These five volumes present the results of studies in the more important fields in which governmental administration in Great Britian has been expanding rapidly during the present century. While the several works deal to a considerable extent with the same subject-matter, the method of approach by the different authors and the emphasis are distinctly different; and they thus supplement each other in analyzing varying aspects of this recent development.

Mr. Wickwar entitles each of his books an "historical survey," and traces the development of voluntary, local, and central government activity from the time of the Tudors (in the case of poor relief and highways), but more fully during the nineteenth and twentieth centuries. He distinguishes social from public services as follows: "While the Social Services strive after social justice and spend themselves in a struggle to lessen the maldistribution of the artificial necessities of modern life, the Public Services try to pay their way by bringing their facilities to the doors of all classes alike."

After an introductory chapter on the genesis of the social services, five chapters deal with poor relief, education, public health, natural contingencies (sickness, old age, premature death, and blindness), and economic contingencies (unemployment). These are followed by two chapters of a general nature on the social service state and the state and society, including sections on centralization, local units, administrative legislation and adjudication, and social service expenditure. The vast increase in scope and relative importance of the social services is indicated by the statement that: "Fifty years ago, . . . the annual cost of national defence, imperial expansion, and war debt, was . . . three times the total sum spent [from public funds] on popular education and poor relief. By 1931 the gross expenditure . . . on the principal statutory social services had risen to approximately the same level as the annual cost of defence and the national debt. While national defence and debt expenditure was multiplied by nine between 1888 and 1931, social-service expenditure was multiplied by twenty-seven. . . ." "At the present time nearly half [of this expenditure] comes from parliamentary votes." "Less than a quarter . . . comes from local rates and de-rating grants." ". . . another good quarter . . . are sums collected . . . in part payment for housing or schooling or insurance."

One of the numerous social changes effected by these social services has been the growth of new professions (the sanitary inspector and the nurse), and the transformation of old ones (medical and teaching). But there has not yet evolved a class of well trained experts capable of coördinating the work of specialists.

Of the two reports by the Political and Economic Planning group, one is a general survey of the social services, and the other a more detailed study of the health services. The term public social services is applied "to those services provided or financially assisted by the public authorities, which have as their object the enhancement of the personal welfare of individual citizens." These are classified in three groups: community constructive services (education, medical, the blind, mental health, and employment); social insurance services (health, contributory pensions, and unemployment); and social assistance services (non-contributory old age pensions, unemployment assistance, and public assistance). Thus are covered the same services that are treated in Mr. Wickwar's book on the same subject.

A summary and conclusions appear at the beginning of the report on the social services. A brief chapter outlines the general development, followed by a more detailed description and a survey of each of the three groups of such services. These are followed by a chapter on the significance of the social services and one on immediate needs.

The greatest need of the social services is held to be for more effective

coördination with one another and with the rest of the national policy. Next in importance is the need for reëxamination of the forms of democratic control and public accountability in the social services. There is need also for improvement in the arrangements for recruiting and training officers for some forms of social service work. For these purposes, the establishment of a permanent statutory committee is proposed, to act as an advisory general headquarters staff: to give thought to the basic principles governing the relations of these services to each other and to social and economic policy, to consider changes in the administrative and financial structure, and to make recommendations for dealing with anomalies and gaps in the present system.

In the report on health services, the existing machinery and its operation are presented in much more detail. The general conclusion is reached that these services suffer greatly from confusion and overlapping, and that there is need for their reorientation and for coördination in the relations between public and voluntary agencies.

Mr. Wilson's work on public health services is one of the research studies of the British Institute of Public Administration. It is an examination of the manner in which county borough councils in England and Wales deal with some of the more important aspects of health service: maternity and child welfare, the health of the school child, the care of those afflicted with tuberculosis, and the poor law medical services. The author finds great variations in the degree to which these services are furnished in different communities, and absence of any recognized common standards of adequacy. He therefore favors a more centralized control of policy, by means of a public health advisory council, and the formation of new areas of local administration.

Mr. Wickwar's survey of the public services examines the development of public control of the more monopolistic services, which may be said to be affected with a public interest, such as are considered in the United States as public utilities. Separate chapters deal with ways and terminals (highways, inland waterways, sea ports, and air ports); railway traffic; carriage of goods and passengers (by road, water, aviation, and London passenger transport); postal communications (including the telegraph, the telephone, wireless communications, and broadcasting); water supply; light and power supply; and several "ancillary services." Two concluding chapters deal with the public services and the public, and the public services and the state.

The last chapter calls attention to the development of new regional areas for various purposes, and the relation of the public services to the defense services and the social services. The author notes that, in both the public and the social services, the early- and mid-nineteenth century was an age of local initiative, mainly voluntary; the late nineteenth

century was an age of municipal experiment; and our own age has seen the cult of financial autonomy on a national scale. At the same time, there are significant differences between them. As election issues, the social services have now taken the place of the public services in the era of municipalization. While the nineteenth century invested its capital in the public services, the twentieth century spends out of income on the social services.

These studies of British experience will be useful in dealing with similar problems of public and social services in this country, and may be of help in avoiding or overcoming some of the difficulties which are still to be solved in Great Britain.

JOHN A. FAIRLIE.

University of Illinois.

Fascism for Whom? By MAX ASCOLI AND ARTHUR FEILER. (New York: W. W. Norton and Company. 1938. Pp. 341. $3.00.)

This book will be welcomed as refreshing reading by both teachers and students interested in Fascism. Professor Ascoli formerly taught at Italian universities, while Professor Feiler was once an editor of the *Frankfurter Zeitung*, the greatest paper of republican Germany. Although now in exile, the authors rarely, if ever, betray any feelings of bitterness—the most dangerous pitfall for émigré observers of home politics. The first and last chapters of the book (pp. 13–27 and 311–333) deal with the international aspects of German and Italian Fascism; these two chapters are written jointly by Professor Ascoli and Professor Feiler. Chapters 2–5 (pp. 31–127), written by Mr. Ascoli, discuss Italian Fascism, and in chapters 6–9 (pp. 131–307) Mr. Feiler analyses German Fascism.

In his short survey of the events that culminated in the March on Rome in October, 1922, Mr. Ascoli presents a searching psychological study of the state of mind of Italian society in the years 1919–22. The existing literature on Italian Fascism mostly confines itself to the period following the conquest of power, and the definitive account of the rise of Fascism to power remains as yet to be written. In Mr. Ascoli's view, Fascism was not the product of capitalistic machinations for the purpose of smashing socialism and preserving the *status quo*. Nor was it the triumph of the nationalist-imperialist idea as opposed to democracy, pacifism, and socialism. Even the "middle-class theory" of the origins and rise of Fascism does not satisfy Professor Ascoli. In his view, Fascism was "not a revolution with a character of its own, but a parasitic growth on the democratic structure that could produce no popular leadership of its own" (p. 43). As long as democracy can produce a vigorous leadership that is able to capture the imagination and aspirations of the people, Fascist *Führer* or *duci* will find it exceedingly difficult to conquer a nation enjoying free institutions. The signal failure of the German democratic

leaders to instill the German nation with enthusiasm for and emotional attachment to the Weimar republic bears ample evidence of Mr. Ascoli's thesis; on the other hand, the Popular Front under Blum and the New Deal under Roosevelt have proved that democratic leadership can galvanize citizens into concrete political action. In addition, Mr. Ascoli repeatedly emphasizes the obvious, yet often overlooked, fact that Fascism can arise and grow only when democracy fails in its promise to pave the way for a fuller and better life. In this sense, it is relevant to speak of Fascism —as Mr. Ascoli does—as not so much an "opponent" of, as rather a "parasitic growth" on, democracy.

In the chapters dealing with the political and economic results of Italian Fascism, Mr. Ascoli notes that no traditional social or economic class has benefited from the new régime. *Politique d'abord* is now the basic postulate of all social endeavor, and capitalists as well as workingmen have to submit to this supreme norm of public action. Mr. Ascoli does not fully discuss the relative loss of independence of organized capital and organized labor, or the relative decline of income of the various economic groups. A more comprehensive analysis along these lines would have shown that the working class has suffered in status and economic well-being more than any other group in contemporary Italy. There is only one social group, as Mr. Ascoli does not fail to note, which has directly benefited from Fascism: the new and vast civil and military bureaucracy whose economic existence is inextricably bound up with the fate of Fascism.

The rôle of the intellectuals is dealt with in a very illuminating way, and Mr. Ascoli deserves special credit for clearing up the position of Italy's leading contemporary philosopher, Benedetto Croce, before and after the rise of Fascism to power. Croce's thought prior to 1922 unintentionally prepared the way for a large-scale "*trahison des clercs*," although of course Croce's own opposition to Fascism was never in doubt. In a future edition of the book, Mr. Ascoli could perhaps add a fuller account of the relationships of church and state under Fascism which we miss in the present edition. The answer to many questions concerning the recent policies of the Church in Italy as elsewhere requires inside knowledge and a sense of historical perspective, and Mr. Ascoli possesses both in a very happy combination.

Mr. Feiler's part on Germany is almost twice as extensive as the chapters on Italy. Where Mr. Ascoli excels in brilliant psychological insights and occasional masterpieces of compressed, epigrammatic diction, Mr. Feiler is concerned more with presenting a thorough and searching factual analysis of the background and policies of the National Socialist State. Mr. Feiler seems to hold two factors mainly responsible for the downfall of the Republic: the short-sighted policies of the Allies, which added political humiliation to military defeat, thus laying the defenders of the

Republic wide open to the onslaughts of the Nationalists and National Socialists, and, secondly, the revolt of the middle classes. Post-war German history, as Mr. Feiler conclusively proves, showed that large-scale impoverishment did not produce a corresponding "consciousness" driving people into the arms of Socialism; still more significant, although these impoverished masses did turn against capitalism as one of the ultimate sources of their woes, their "anti-capitalist yearning" was directed against Socialism at the same time. This was an unforeseen event according to traditional expectations. The important lesson of this phenomenon that Mr. Feiler ought perhaps to have developed along more general lines is the fact that the social status of impoverished groups determines the institutionalized form of their anti-capitalist sentiments. It may drive one social group, such as manual laborers, into Socialist parties, while it may induce another social group, such as the middle classes or landed interests, to take refuge in a revolutionary Fascist movement. This phenomenon is of special significance today, since all advanced industrial societies tend to decrease their number of manual laborers, whereas the number of the "salariat" is constantly increasing. Neither Marx nor Lenin foresaw this development, and neither of them has bequeathed a strategy adapted to the new situation. It is significant not only of the decline of contemporary Socialist thought, but also of Socialist strategy, that it has so far failed, on the whole, to deal successfully with this problem.

Mr. Feiler's analysis of the social and economic policies of National Socialism is extremely thorough, and the pages of these chapters are literally packed with interesting and pertinent facts based on first-hand German sources. A perusal of his evidence shows that National Socialism is economically a constant process of destruction. The new German economy is a *Wehrwirtschaft*, and if war means destruction, then military economy can mean nothing else. The great value of Mr. Feiler's examination of Nazi economy lies in the detailed facts and figures taken from German sources not easily accessible to the American student of National Socialism.

No adequate study of Fascism as a world phenomenon has been written as yet. In some countries, Fascism has conquered state power, in others it vitally influences the actual course of public actions, while in still others the very thought of it moulds men's minds and contributes to a re-appraisal of basic political creeds and techniques. Within their chosen framework, both authors have contributed by means of a lucid analysis of Italian and German Fascism toward a future, more universal, study of Fascism in its totality, psychologically, culturally, and socially.

WILLIAM EBENSTEIN.

University of Wisconsin.

The Democratic Monarchies of Scandinavia. By Ben A. Arneson. (New York: D. Van Nostrand Company. 1939. Pp. xii, 244. $1.60.)

This monograph in "The Governments of Modern Europe" series marks the initial attempt in English to describe at all comprehensively the governmental systems of the Scandinavian countries. In the earlier editions of *The State,* Woodrow Wilson had a chapter on the dual monarchies in which Sweden-Norway was discussed; two or three decades later, Frederic A. Ogg included in the first edition of his *The Governments of Europe* three chapters on Scandinavian governments which were later dropped out; still later, Henry R. Spencer included in his *Government and Politics Abroad* a brief examination of Sweden as an example of democratic monarchy; and in 1938 William B. Munro devoted two and a half pages of his *The Governments of Europe* to the Scandinavian kingdoms. Until the publication of Professor Arneson's book, these short comments constituted our only text-book reviews of the governments and politics of Denmark, Norway, and Sweden. Inasmuch as the material available in French and German is also quite limited and the native tongues of the three countries unfamiliar to most political scientists, the appearance of this volume should receive a hearty welcome. While it does not represent any original research on the part of the author, the contents indicate a rather thorough familiarity with the more general native sources and, as it is the only treatment so far published, may be considered a definite contribution to the literature of European government.

In general, in his consideration of each topic Professor Arneson treats each country separately and in alphabetical and altogether impartial order. There are frequent comparisons, and the whole forms a closely interrelated survey. A brief introductory chapter on "Land and People" furnishes an ethnological and social background. This is followed by an outline of the political history of Scandinavia which is a model of conciseness. The remaining six chapters deal, respectively, with parties and elections, the policy-making process, the instrumentalities of administration, the administration of justice, local government, and many of the social and economic aspects of government that have drawn widespread attention to northern Europe. Altogether, it may be said without question that the author has compressed as much factual information into this book as could possibly be done within the scope of 225 pages of text. In most respects, the treatise is strictly up-to-date; and the bibliographical note which is included, while omitting some standard Scandinavian references, constitutes a good introductory list for students who are willing and able to use the materials. Although it may be unfortunate that the first study of the governments of these countries published in English should be of the handbook type, *The Democratic Monarchies of Scandinavia* describes the salient features of three too much neglected democracies

which, so far at least, have not found it necessary to compromise with brutalitarianism. Mr. Arneson's book is distinctly one of the more valuable works of the series in which it appears.

ERIC CYRIL BELLQUIST.

University of California.

The Government of Greater Germany. BY JAMES K. POLLOCK. (New York: D. Van Nostrand Company. 1938. Pp. xii, 213. $1.25.)

National Socialist Germany presents so many controversial questions in political philosophy and in foreign and domestic policies that the actual structure and functioning of its government are sometimes overlooked. Even when not overlooked, the Third Reich does not readily lend itself to a still-life picture, for the period since 1933 has been one of rapid and kaleidoscopic changes and the end is not yet in sight. Nevertheless, the main features of Hitler's "unitary, centralized, monocratic, one-party state" are now complete and merit the careful attention of students of political science.

In the present volume, Professor Pollock, from his intimate knowledge of things German, has produced a well balanced and up-to-date account (concluded after the *Anschluss* of Austria but before the "Peace of Munich"), which emphasizes governmental and party machinery and administrative management. It is a description of "a new government built on an old superstructure operating in an atmosphere of great tension" (p. viii). Although the writer maintains an attitude of objectivity and fairness, he does not hesitate to call a spade by that name (*e.g.*, p. 90).

After sketching the physical and cultural factors in German life, and the evolution of political institutions up to 1933, the author presents a clear and detailed analysis of the *NSDAP*, which "has the most complete and elaborate organization of any political party in the world" (p. 60). In examining the relations of party and state, Pollock holds that "in contrast to Italy, the party exists beside the state as a second sovereign organization" (p. 67). One wonders if dual sovereignty is not more apparent in theory than in practice. Three chapters are then devoted to the intricate governmental mechanism, national and local, and the significance of bureaucracy under dictatorship is appraised. Then follows a brief discussion of economic, social, and religious affairs—topics which are less fully treated than in the companion volume on France by Walter R. Sharp. The eighth and concluding chapter deals with Germany's position in the world.

The work is provided with various helps which enhance its usefulness as a text and for the general reader. Among these are a map of Germany in colors, facsimiles of ballots, charts, tables, an excellent critical bib-

liography, and a good index. Taken as a whole, the book is a scholarly and welcome addition to the Van Nostrand series on the governments of Europe.

ROGER H. WELLS.

Bryn Mawr College.

Germany and the Great Powers, 1866–1914; A Study in Public Opinion and Foreign Policy. BY E. MALCOLM CARROLL. (New York: Prentice-Hall, Inc. 1938. Pp. xv, 852. $5.00.)

Presenting a detailed and unbiased account of German diplomatic activities, illuminated by frequent allusions to newspaper literature and to the opinions of political groups and prominent statesmen, Mr. Carroll has contributed to a better understanding of modern diplomatic history. The period of German unification (1866–71) is treated briefly, but the events of the succeeding years are discussed at greater length.

The author makes no pretense at scientific analysis of German public opinion in relation to foreign policy. He is interested mainly in showing the nature of public discussions as indicated in newspaper articles. At times, conclusions are ventured, however, as to the relationships between government policy and press opinions.

It is brought out that the government's control over the press in Germany was greater than in France and England, but that it was "far less complete and that there was more real independence of opinion than is generally believed." Many attempts by the government to fashion opinion through the press are mentioned, such as Bismarck's crusade in 1883 against the French *revanche* movement, and the campaign of 1913 for legislation enlarging the army.

References to situations in which press opinions fixed the direction of government policies are less frequent. Generalizations on such a matter would clearly be hazardous, for it is not often possible to know why a government is moved to pursue a course of action. Professor Carroll believes that in 1878 Bismarck's Near Eastern policy was the result of opposition pressure. He further states that during the *Einkreisung* scare of 1908, the "general public, the press, and the government probably influenced each other." In neither of these instances, however, is evidence presented which makes the conclusions convincing.

The reader is impressed by the extent of the information on foreign policies made available to the German people. The view commonly held during the World War that the Germans had been kept in ignorance of the government's objectives and policies is not substantiated by this volume. It is understood, of course, that every government is cautious not to place facts before the people which will lead to a frustration of plans, and that Germany was no exception to this rule. Nevertheless,

it appears that the German public was usually aware of major developments.

NORMAN L. HILL.

University of Nebraska.

Foreign Policy in the Making; The Search for a New Balance of Power. BY CARL JOACHIM FRIEDRICH. (New York: W. W. Norton and Company. 1938. Pp. 296. $3.00.)

The publication of this volume is exceedingly timely. Never before has the American press devoted so much space to the problem of foreign policy. The people of the United States, hitherto loath to regard any political problem as serious unless it pertained to party or pocketbook, is at last world conscious. Isolation is no longer a synonym for peace, nor has the world been made safe for democracy. In fact, democracy is at present in such a precarious position that even anti-Administration senators find cause for alarm. The threat of another world war in spite of the ardent desire for peace on the part of all democracies raises serious doubts as to the success of the conduct of foreign policy in democracies in a world dominated by dictatorships.

Dr. Friedrich's study is an effort to consider this problem by outlining the pattern of democratic foreign policy in post-war Europe. By way of preliminary, he discusses the three well established principles of pre-war diplomacy: the balance of power, the precedence of foreign policy over domestic policy, and the necessity of a continuous policy to make it effective. He finds these principles lacking in dictatorial policy. In their place has been substituted mass emotionalism, "the most dangerous force generated by democracy in foreign affairs."

On the other hand, democracy has not yet developed suitable techniques for the conduct of foreign relations, and the self-satisfied assumption that democracy at home insures peace abroad is both false and dangerous. The people desire both peace and the things that lead to war, and are politically divided on these issues. It was popular opinion that made the Peace Conference of Paris a tragedy of errors. Jingoism and emotionalism produced the "khaki election" in Great Britain and the disastrous results of the Zinovieff letter. Nevertheless, the author, although appreciative of the handicaps and mistakes of the democratic method, finds nothing better to take its place. Permanent peace must be found in constitutional goverment, "in the victory of the democratic way of life."

Perhaps the most valuable part of the book is the incisive analysis of the foreign policies of the powers from Versailles to Munich. In the words of the author, "international diplomacy since the war resembles the

famous French soup, *bouillabaisse;* it is truly a medley of oddly assorted fish." He regards the League of Nations as transcending existing possibilities because of the great diversity of political systems, while "a balance of power, though far from being a beautiful design, may yet be preferable to the international anarchy which is prevailing at present."

One might question certain statements, such as "French foreign policy from Freycinet to the World War remained unaffected by party controversy," remembering M. Delcassé's downfall; or the characterization of Hitler's policy as "blundering statesmanship," if we contrast the present relative position of Germany in Europe with its position under Stresemann or Brüning. But we should not be too critical of Professor Friedrich's opinion that the Czechs would not surrender without fighting —he was spared consideration of the most abject failure of democratic foreign policy.

The last chapter, entitled "International Civil War," is a brilliant comparison of conditions in 1914 with those of the present, though it must be confessed that the picture painted is sufficiently somber. The author has no delusions regarding a policy of concessions. "An olive branch is a thorn in the dictator's eye." Nor does he think that the United States can isolate herself. Hope lies beyond the present strife when democracy shall again be victorious and the next time be made safe for the world.

GRAHAM H. STUART.

Stanford University.

France Overseas. BY HERBERT INGRAM PRIESTLEY. (New York: D. Appleton-Century Company. 1938. Pp. ix, 463. $5.00.)

In attempting to present the whole history of French imperialist and colonial activity in modern times within the covers of a single volume, Mr. Priestley has set himself an exceedingly difficult task. The subject-matter with which he must deal ranges far and wide in time and space, and the literature which he has consulted is enormous. An immense amount of historical material and documentation drawn from a variety of sources has been usefully organized, and the book should undoubtedly serve as a helpful work of reference. With occasional glimpses back to earlier times, it takes as its center the development, in the period since the Restoration, of the principal colonial regions which go to make up the French Empire. Its division into chapters has followed primarily the lines laid down by the several colonial and protectorate jurisdictions. The lesser French colonies, somewhat unfortunately including in this category those in the American hemisphere, have secured only casual mention.

Where so much that is useful is offered, it may well seem ungracious to focus rather upon the inadequacies than upon the gratitude which is unquestionably due for what is here presented. It is, however, a legitimate question to ask whether the book really rises above the level of a somewhat crowded and pedestrian work of reference and justifies its subtitle: "A Study of Modern Imperialism." If the term "Study" implies, as it does to the present reviewer, more than a compact narrative of historical events, then it is to be feared that it does not. Dealing with the book solely within its own more obvious framework as a "plain narrative of events," it is doubtful whether so compact and abbreviated a treatment as that accorded in this volume can convey any real impression of the meaning and significance of the events and institutions which are mentioned. In dealing with regions and with problems which are almost wholly unfamiliar to even the instructed reader, it is essential that enough of the context and color be given to afford some basis on which a coherent interpretation can be constructed.

But it is precisely in the realm of interpretation that Mr. Priestley most seriously falls short of the mark. Particularly in the concluding chapter, which attempts to point some of the lessons of the story, the reader is left with a sense that the author was overwhelmed by the mass of his notes and citations and somewhat haphazardly allowed them to speak for themselves in a form of indirect citation which makes it impossible to determine which of the conflicting views the author himself accepts. For the political scientist, the discussion of colonial institutions is decidedly inadequate and much of the concluding chapter peculiarly distressing. The mandates system, for example, almost completely neglected in the rest of the book, is subjected to a truly extraordinary discussion, including a reference to a hitherto undiscovered Article 119 of the Covenant which provides that withdrawal from a mandate can be accomplished only by a unanimous vote of the Council; and the British Commonwealth would have difficulty in recognizing itself in the statement that Canada, Australia, New Zealand, and South Africa have self-government in local affairs, and that "similar privileges" are enjoyed by the Irish Free State, Southern Rhodesia, and Northern Ireland.

It is unfortunate also that the book could not, in a swiftly changing world, have been brought more nearly up to date. Despite an extended discussion of more or less recent Franco-Italian rivalry, the Ethiopian conquest is barely and belatedly mentioned, and the author refers at one point to French acquiescence in the Ethiopian campaign of 1935. With too great a degree of foresight, he refers to the fact that Syria has only recently got rid of French tutelage.

RUPERT EMERSON.

Harvard University.

The Rise of Anglo-American Friendship; A Study in World Politics, 1898–1906. By Lionel M. Gelber. (London: Oxford University Press. 1938. Pp. 292. $3.75.)

The years at the turn of the century witnessed the emergence of a marked *rapprochement* between Washington and Downing Street. It is to these "formative years of Anglo-American understanding" that Lionel M. Gelber, a Canadian scholar, directs our attention with a competent study, to whose publication the Rhodes Trustees made a substantial grant. The author presents an even-tempered, careful, solid, non-spectacular analysis of the diplomacy of these years.

After a century of post-Revolution ill feeling, both countries during the 1890's began to turn from isolation to coöperation. Not only did the two Powers set themselves to the elimination of conflicts in their mutual relations, but they also developed a common front on larger questions of world politics—"an inclination towards unity tempered, however, by other British commitments and the tradition of American isolation" (p. 1). From the diplomatic correspondence on such questions as the Spanish, Boer, and Russo-Japanese wars, the Far East, Morocco, the Alaska boundary, Venezuela, and the Panama Canal, Gelber shows that the development of Anglo-American understanding resulted from check and counter-check, advance and recession. Never, however, was the thread of friendship broken, and frequently it emerged with added strength. The *rapprochement* was of reciprocal advantage, and honor and interest intermingled. Great Britain was able to leave her naval interests in the Western hemisphere "to the benevolent protection of the sea-power of the United States," although Theodore Roosevelt remarked typically that "if we quit building our fleet, England's friendship would immediately cool." When feeling between the two countries ran high, as in the decision in the Alaska boundary case, which Gelber calls another milestone "along the rugged road of Anglo-Canadian concessions to the United States" (p. 165), the much-sought end of fundamental understanding was made to justify questionable means. With the British with him—at least not against him—Roosevelt was emboldened to venture farther upon the uncharted sea of world politics and diplomatic commitment than any other president of his time.

Gelber's study is based almost entirely upon diplomatic correspondence, letters, and biography. But can diplomatic records tell the whole story? There is no evidence that the author employed the newspapers or periodical literature of the time. By and large, the study is relatively complete on the political and diplomatic side, but inadequate on the economic and social side. By a similar token, the author frequently allows his array of facts to minimize the necessity for sufficient interpretation.

Bound by ties of race and tradition, joined by common ideals of freedom and rule of law, the pity is that Anglo-American collaboration has "seldom mounted to the high level dictated by . . . common interests"; while on the world stage "it assumed forms that were timid, ineffectual, and disappointingly negative" (p. 85). The full possibilities of the potential strength and influence of the two Powers have not yet been realized, and, as Gelber warns us, the problem remains.

IVAN M. STONE.

Beloit College.

History of the Netherlands East Indies. By E. S. DEKLERCK. (Rotterdam: W. L. and J. Bruisse. 1938. Two vols. Pp. xii, 448, and vi, 661. $12.00.)

These volumes were written from a patriotic motive. In his preface the author indicates distress at "how extremely little is known" regarding the East Indies in foreign countries. He further states that "in the foreign press, opinions are repeatedly expressed regarding the Netherlands East Indies which witness, alas, to a deplorable ignorance of the subject. At times, these newspaper articles even seem to be inspired by a species of malicious envy. False representations must thus serve to give the impression that the Netherlands is not worthy of her colonies and also lack the means to govern and exploit them in a proper manner." It is to correct these false representations abroad that DeKlerck, a retired lieutenant-colonel of the Dutch army, has published these two volumes in the English language.

The author states that "it hardly needs mention that the best person to compile a history of the Netherlands Indies is a subject of the country to which these colonies belong." This can be true only in the case of a "compiler" with greater objectivity than that displayed by the present author. Many passages of the two volumes are characterized by an adolescent patriotism and a strong political bias. DeKlerck leaves the impression that the Calvinistic party called itself the Anti-revolutionary party because of its opposition to the constitutional reforms of 1848. Nothing could be farther from the truth. The adoption of the name had nothing to do with the reforms of that year. The name had its origin in opposition to the anti-religious views with respect to the source of political authority held by leaders of the French Revolution. Instead of being opposed to the reforms of 1848, the Anti-revolutionary leaders forcefully championed them. It was a leader of that party, Keuchenius, who in 1866 moved the revolution which finally established parliamentary supremacy. Kuiper, the great Anti-revolutionary leader, waged a hard and bitter fight for extension of the suffrage. With the possible exception of Van Kol and Van Deventer, no other person had a greater influence in bringing about the shift to the "ethical" colonial policy than did Kuiper.

DeKlerck's antipathies break through everywhere. The Social Democrats are scored for their disinclination to coöperate in a defense policy. Worse still, they are accused of trying to infuse the working classes with a spirit of opposition against authority and of hatred against the royal house and the monied classes. The overthrow of the existing order was the end in view, the disruption of the army and navy, the means to attain it." Anyone at all acquainted with the mild character of Dutch socialism, especially Dutch socialism since 1918, can only be amused at statements like this.

However, the work as a whole is not as bad as these criticisms would imply. The author's bias naturally comes out most strongly in those chapters which deal with the more recent period. The first volume contains a chapter of nearly a hundred pages on "The Introductory History of the Netherlands," and it is in the latter part of this chapter that his prejudices are revealed most glaringly. The remaining chapters of Volume I, which carries the history of the East Indies to the downfall of the Company, are not subject to this criticism, but are in the main very well done. The same is true of all but the later chapters of Volume II, which are marred by the author's failure to repress his lack of sympathy for the liberal policy of the last few decades. This policy is characterized as "experimenting with humanitarian theories," which, "however alluring they may be, means playing with fire. . . . " His scorn for Governor-General Van Limburg Stirum and DeGraef, who were very sympathetic with Indonesian aspirations for self-government, is ill concealed. Their "effusions" irk him. The last chapters are also too sketchy to be satisfactory. Especially do they fail to set out the chief problems of the East Indies with any degree of sharpness.

The English is on the whole very acceptable, although not altogether free from peculiar lapses, such as "laudate Marxistic ideas" and "functionated."

The second volume is provided with an excellent set of large maps.

AMRY VANDENBOSCH.

University of Kentucky.

The Law of Treaties; British Practice and Opinions. BY ARNOLD D. MCNAIR. (New York: Columbia University Press. 1938. Pp. 552. $7.50.)

This is an important book and doubtless one that will become as classic and as indispensable to students of international affairs as Moore's *Digest* and Hyde's *International Law.* The distinguished author, now vice-chancellor of the University of Liverpool and formerly Whewell professor of international law at Cambridge, states in his preface that he has taken the design of those two works as his basic pattern. The emphasis, there-

fore, is upon the actual practice of the United Kingdom in the matter of treaties, and it is to be hoped that this volume will be the forerunner of others of similar type dealing with other nations and their interpretation of various international legal rules. A book of this kind fulfills a long felt need; text-book maxims of international law, often set forth and parroted with only inadequate evidence to support them, need reviewing in the light of the real views and experiences of foreign offices. As expressed in a memorandum circulated a few years ago by the public law department of Columbia University, "foreign offices decide what the law is and what it demands. Their decisions reflect and mark the practice of the time and yield authoritative evidence of what international law really is." As a result of discussions following the appearance of this memorandum, Professor McNair undertook this investigation of British treaty practice.

The author makes it plain that this is not an official work and cautions the reader not to assume that governmental action necessarily follows the legal advice. Forty-four topics concerning treaties, ranging from "terminology" and "constitutional requirements" through "validity" and "interpretation" to "termination" and "the effect of war between contracting states," are presented. In each instance, the author gives a summary of the practice and then furnishes selected documents, very well chosen, which constitute the bulk of the book. These consist for the most part of reports by the law officers of the crown and of court decisions, though occasionally other material, such as excerpts from diplomatic despatches, is inserted.

Of special interest are some of the later sections where British practice concerning unilateral termination, changed conditions (*rebus sic stantibus*), and prior violation is examined, and where the author concludes that "the view of the United Kingdom government is that, unless and until the community of states constitutes an international authority to vary treaty obligations without the consent of the parties, the rule that treaties cannot be abrogated or modified without the consent of all parties must form part of the basis of the international community" (p. 378). Professor McNair is quite tantalizing at another point where he is dealing with "validity," and where he says: "It is believed that a treaty between two states the execution of which contemplates the infliction upon a third state of what customary international law regards as a wrong is illegal and invalid *ab initio*" (p. 113). But, significantly enough, no document is furnished to support this statement. What of the treaties between the Great Powers dealing with Ethiopia and Persia, for example, or the projected Anglo-German treaty of 1914 with its arrangement about Portuguese colonies, or the Munich Accord and Czechoslovakia? We cannot expect answers to all of our questions, however, and Professor McNair

has supplied us with so much that is invaluable that he is entitled to the limitless thanks of every international lawyer.

PAYSON S. WILD.

Harvard University.

BRIEFER NOTICES

AMERICAN GOVERNMENT AND POLITICS

For five years, the National Resources Committee has sought "to encourage planning from the ground up, through local, county, and state planning agencies." In *The Future of State Planning* (National Resources Committee, pp. vii, 117, $0.25), an attempt is made to review the progress made down to March, 1938, and the possibilities for the future, under four headings: (1) the development and present status of state planning; (2) functions and opportunities of state planning boards; (3) the position of the planning board in the governmental structure; and (4) relationships of the National Resources Committee and the state planning boards. This material is presented in the first forty pages, the remainder of the volume including a state-by-state listing of planning agencies, showing headquarters, membership of boards, and bibliography of publications. The Committee finds that most of the energies of the state boards have been devoted to the collection of basic data and to the establishment of working relationships with other governmental agencies; that state planning must concern itself with all the resources of the state if it is to be comprehensive; and that there can be no truly national planning without state planning. It finds that notable progress has been made in the five-year period in the establishment of planning agencies, and in the development of long-range programs for conservation and for the beneficial use of the resources of the states. To these findings, and to recommendations that, in substance, the policies heretofore followed be continued, few persons will object. The report presents an impressive record of accomplishment. Perhaps the most significant question in the future of state planning—as of planning in general—is that of power for the planners. On this point, the Committee takes a definite stand: "The experience of the state planning boards has demonstrated that they should be solely advisory in character," depending for the adoption of their recommendations upon the established policy-determining agencies of the government. It is, the Committee says, "desirable that the trend of the state boards to become staff agencies to the governor be encouraged." This would seem to be a workable solution. It would be administratively unsound to give them power in independent status, while without power their recommendations might often be ignored. As staff agencies of the governor, their position in the governmental set-up becomes analogous

to that of the budget officer—which is, perhaps, as it should be.—W. BROOKE GRAVES.

No one in the country is better qualified than Miss Grace Abbott, former chief of the Children's Bureau and present professor of public welfare administration in the School of Social Service, University of Chicago, to collect documents and to edit them on the subject of *The Child and the State.* (Volume I, Apprenticeship and Child Labor, pp. xxiii, 679; Volume II, The Dependent and the Delinquent Child: The Child of Unmarried Parents, pp. xxvii, 701, University of Chicago Press, $5.00.) Miss Abbott makes available source materials tracing the historical development of state responsibility for the provision of special services to the apprenticed child, the dependent, neglected, delinquent, and illegitimate child. She further shows the gaps in the programs of federal, state, and local jurisdictions and the trends in provision of services and in administration. These materials also illustrate the processes by which opposition to change is overcome and some unanimity of opinion achieved. She has done these things by assembling typical laws, important court decisions and rulings of attorneys-general, and reports of various types of committees and administrative agencies. Volume I is in five parts: the first deals with the legal status of the child in the English and American family, the second with apprenticeship and child labor legislation in Great Britain, the third with apprenticeship in the United States, the fourth with child labor in the United States, and the fifth with international child labor legislation. Volume II is in four parts: the first reviews the development of public care for dependent children in the United States, the second discusses the state and the child offender, the third the state and the child of unmarried parents, and the fourth the administration of child welfare services. The author's breadth of knowledge is shown in the wide variety of documents she has selected. The introductions to the nine parts are in Miss Abbott's own words and contain brief summaries of the succeeding documents and some of her own opinions and attitudes concerning the past and the future of the child and the state. Case books and books of documents are difficult for both student and teacher to use. One wishes that Miss Abbott and others who use this method of teaching and writing would expand their introductions into full-sized texts supplemented and amplified by such documentary books as these two volumes. Nevertheless, students of public welfare administration and persons, lay and professional, interested in securing the best care for all children must be deeply grateful to Miss Abbott for her careful research.—HELEN I. CLARKE.

Professor James C. Dockeray's *Public Utility Taxation in Ohio* (Ohio

State University Press, pp. 200, $2.50) is a detailed discussion of the legislative and administrative problems of taxation of public service enterprises in the state of Ohio. Three of the chapters are devoted to the legislative history of public utility taxation in the state, while the remaining portions deal with such problems as valuation, apportionment, and the different types of taxes imposed on these enterprises. Prior to 1910, public utilities in Ohio were valued by a variety of administrative procedures. The assessing authorities included the county auditors, the state board of auditors, and the state tax commission. Professor Dockeray shows clearly that the centralization of assessing authority has led to a considerable increase in public utility valuation. He explains in detail the present methods of valuation and points out their merits and shortcomings. On the whole, the method now used in the state is a combination of depreciated cost of construction and capitalized operating income. He shows how these methods are applied to each type of utility, and concludes that under them the public utility valuations for tax purposes have been well made. He considers the problem of the apportionment of the unit-assessed values of utilities to the areas in which the several companies operate, and applies these methods to the different types of utility concerns in the state. Chapters 7 and 8 consider the various types of taxes imposed on utility companies in the state, consisting chiefly of the excise tax and the tax on intangibles. Considerable attention is given the matter of the incidence and burden of the taxes; and there is a chapter entitled "Burden Analysis" which shows in statistical form the burden ratios and burden index for the several classes of utilities. The study is an attempt to show the effect of the Ohio public utility law upon the various sizes and classes of public utility companies. It does not single out any particular utility, but adheres strictly to a policy of anomymity. This method of treatment was necessary because of the Ohio law of 1931 which made the utility records confidential in so far as they relate to intangibles and earnings data. It is unfortunate that it was necessary to resort to such treatment of the subject, weakening the effectiveness of the work and lowering its value. On the whole, however, the study, considering its limitations, is rather comprehensive and somewhat unique, and is a thorough piece of research.—J. W. MANNING.

Observers who search the serious literature of the times for guides to the trend of revolutionary change in economic life will find a tangible clue in Jules Backman's *Government Price-Fixing* (Pitman Publishing Corp., pp. xi, 304, $3.00). Without expressing the thought directly, the content of the book indicates that of the four phases through which a changing economic system passes—undermining of the prevailing system, collapse, confusion and experimentation, and the emergence of new

patterns—the third is the one now prevailing. The study is not intended to show that the old pattern of economic life is being undermined—"*laissez faire* . . . is as dead as the proverbial dodo"—nor to record the nature and extent of the collapse. Those phases are passed. Backman draws together a wide array of relatively new economic techniques and subjects them to critical analysis, thus incidentally disclosing that experimentation is the order of the day. Approaching the subject from the angle of price-fixing, the analysis covers a much broader field of economic practices—experiments with limitations of supply, with marketing controls, and with loan programs designed chiefly for the benefit of producers. It shows that the trend toward government price-fixing began before the Great Depression; that the movement manifests itself throughout the world; and that it is, or has been, employed on a wide range of products, with agricultural commodities predominant. By the discussion of principles and by such case studies as price-fixing during the World War, the N.R.A. and A.A.A. experiences, Brazil's coffee control, and several of the more prominent international control schemes (tin, rubber, and sugar), the author manages to give a well-rounded account of a significant trend in economic life. The layman will not be interested in so technical a study, but the student of economic and political change will welcome a book which saves him the labor of collecting such voluminous and diversely-scattered material. The critical judgments are open to serious question—even from the author's own criteria—for while he declares and shows that *laissez faire* is "dead as a dodo," he persists throughout in applying its principles and philosophy to the new development he surveys.—GEORGE H. E. SMITH.

Experience of sixteen years with a plural executive is reported and analyzed in *The State Administrative Board in Michigan* (Michigan Government Studies No. 1, Bureau of Government, University of Michigan, pp. 107), by George C. S. Benson, with the collaboration of Edward H. Litchfield. Since 1921, an ex-officio board of seven elective officials, including the governor, has been entrusted with "general supervisory control over the functions and activities of all administrative departments, commissioners, and officers of the state, and all state institutions." This monograph deals historically and critically with the various functions assigned or exercised. Central purchasing, general fiscal control over accounting and auditing, control of revolving funds and of borrowing, power over building construction, including supervision of highways, were concentrated in this single agency. Power to make emergency appropriations was also given the board, augmented for this purpose, however, since 1931, by four members of the legislature. Full budgetary control was also originally transferred to the board, but now is vested in the governor.

"More central administrative control powers were entrusted to the Board, especially from 1921 to 1925, though they were not all exercised by it, than have ever been entrusted to any other single state governmental agency." The frequent dominance of the governor as chairman was offset in part by the responsibility of sub-committees, and the report concludes that the people of Michigan have traditionally placed greater trust in multiple than in unitary responsibility. Weak executively—a department of finance could better coördinate the fiscal functions—the board has been a satisfactory deliberative body, exercising an important educational function in inspiring public confidence in a central administration.—F. H. GUILD.

The purpose of *Tomorrow in the Making* (McGraw-Hill Book Co., pp. xv, 471, $3.00), as announced by its editors, John N. Andrews and Carl A. Marsden, is "the enlightenment of Mr. Everyman." Twenty-six persons made separate contributions, each an analysis of one of the major problems confronting the American people today or an explanation of a foreign system which they were urged to adopt. The articles are grouped under four headings. Those under "Frame of Reference" include analyses of the current crisis in general, social progress through education, democracy as a way of life, propaganda, academic freedom, and social goals. Harry Elmer Barnes, taking the historical viewpoint, leads off with a statement that "very little in our institutional life and social thinking dates from a period more recent than the year 1800." If this should be taken by the reader as preparing the way for a series of unadulterated revolutionary proposals, he will be disillusioned; for the editors have faithfully attempted to have every intelligent viewpoint represented. In the second group, "Patterns of Change," Lawrence Dennis, Norman Thomas, and Earl Browder explain the systems of fascism, socialism, and communism, respectively, and how they may be adapted to the American scene; but capitalism, technology, and consumers and government-sponsored coöperatives have their spokesmen. The third frame, "Our Relations at Home," covers ten significant and perplexing topics, including judicial review, taxation, labor, crime, governmental regulation of business, and the administrative organization of government. Among the contributors are Warden Lewis E. Lawes, Samuel Seabury, Walter E. Spahr, and Rinehart J. Swenson. In the fourth, "Our Relations Abroad," the cases for American isolation, neutrality, and world leadership are presented in separate articles. While there are inevitably sharp differences in the merit of the various contributions, they maintain a high average in the choice of facts and in clarity and attractiveness of presentation. The makers of the volume deserve praise for their offering to the cause of a well-based public opinion.—EARL L. SHOUP.

In *American Problems of Today* (F. S. Crofts and Co., pp. xiii, 354, $2.00), Louis M. Hacker undertakes the difficult task of surveying national governmental policy in its manifold aspects since the Harding administration. The study is essentially a revision and extension of the author's earlier *Short History of the New Deal*, written in 1934. Developments culminating in the crisis of American capitalism in the early 1930's are traced, following which there is an examination of the New Deal recovery and reform policies. The conclusion is reached that events of the past two decades have demonstrated the apparent inability of traditional *laissez faire* capitalism to function in terms of a free market, and that a system of state capitalism, doubtless to be perpetuated, has been evolved as a solution. Pressing problems of the future are believed to be the erection of proper defenses against possible oppression at the hands of an irresponsible governmental bureaucracy and the avoidance of involvement in international war. A none too optimistic view is taken regarding their successful solution. Considering the controversial nature of the questions dealt with, an objectivity of viewpoint has been preserved to a remarkable degree. The study is replete with statistical matter, charts, and graphs which, however wearisome to the general reader, lend authority and emphasis to the generalizations made. A well-selected bibliography on the several phases of recent governmental policy is appended. For the student desiring a general over-all view and unprejudiced appraisal of the New Deal, its background, methods, and achievements, the book should prove of much value.—Joseph E. Kallenbach.

In his *The Negro and the Democratic Front* (International Publishers, pp. 222, $2.00), James W. Ford, negro candidate for vice-president of the United States on the Communist ticket in 1932 and 1936, presents a collection of his speeches and newspaper articles prepared during the heat of his political activities in the past three or four years. Ford's selection as the negro leader of the Communists was due in part to the fact that he personified the grievances of his race in this country—lynching, the cropping system, discrimination, exploitation in Southern industries, limited vocational opportunities in the North, and lack of recognition. His grandfather had been lynched in Georgia by a white mob because of a dispute over the ownership of a pig. The other experiences of Ford with the insecurities of his race were all personal. A student for three years at Fisk University, Ford is a representative of the negro intelligentsia as well as of the working classes. His book follows out the new line of the Communist party since the meeting of the Third International in 1935. The 1928 program of self-determination in the Black Belt is hardly mentioned. Stress is placed upon the immediate, daily needs of the negroes. The tasks emphasized are the unionization of

negro labor, the breaking down of Jim-Crow barriers in trade unions, the struggle against fascism and war, the defense of Ethiopia, the struggle for negro civil rights in America, the election of progressive negro candidates to offices in national, state and local governments, the defeat of reactionary white candidates for various elective offices, and the building of the democratic front. There is little that is violently revolutionary in Ford's writings. He does not call for the seizure of power by force. However, in a subtle fashion he has reminded negro audiences that they have a revolutionary tradition—that of Cato, Gabriel, Denmark Vesey, and Nat Turner.—HAROLD F. GOSNELL.

American Public Finance (Prentice-Hall, Inc., pp. viii, 807, $4.00), by William J. Schultz, is no mere bringing up to date of an earlier work which appeared in 1931 under the title *American Public Finance and Taxation.* While in the new work the author emphasizes the "profound transformations in American fiscal practice and subsequent contributions to American fiscal thought" which have occurred in the intervening years, he has maintained a nice balance between the importance of the old and the new material. The book is so arranged as to be particularly suitable for use in a half-year course, but its references make it easily adaptable as a basic text for a full year course. What is perhaps the most unusual treatment of topics by Dr. Schultz is found in Part II, entitled "Principles of Taxation." These principles he divides into four parts; Constitutional Aspects, Economics of Taxation, Distributive Aspects of Taxation, and Fiscal and Administrative Considerations. Part III of the text, which deals with "American Taxes," contains many graphs and tables of tax statistics, nearly every one of which is brought down to a very recent date. It is probably true that in no other field of political or economic study does a book get so very out of date as one dealing with government finance. The inclusion of 1938 tax rates and 1936 and 1937 tax receipts in the tables and charts mentioned is a contributing factor to the worth-whileness of this new text-book. In addition, two other features, sometimes overlooked, deserve mention. These are the clearness of the outline of topics in each chapter, indicated by variations in the type used, and the inclusion of an important number of tax forms in the appendices on pages 707–767.—JOHN G. HERNDON, JR.

Because of the current interest in the monopoly inquiry, a timely volume is *Trade Associations in Law and Business* (Central Book Co., pp. 399, $5.00), written by Benjamin S. Kirsh, a member of the New York Bar, in collaboration with Harold R. Shapiro, assistant professor of law in the New York Law School. Mr. Kirsh declares in his preface that the volume constitutes "a critique of the strength and weaknesses of the

trade association movement," and that it "points out in what respects trade association activities are either socially beneficial or hostile to the public welfare, and describes how judicial findings have delimited rightful and wrongful actions of business groups in their concerted functions." Despite this declaration of purpose, the emphasis is legalistic rather than social. Nevertheless, so masterly is the presentation of the legal problems and the factual backgrounds of the leading cases that much of the social import of the subject-matter may be gleaned by implication. The book is well organized and contains a valuable table of cases on trade associations.—WILLIAM O. FARBER.

Ray Allen Billington's *The Protestant Crusade, 1800–1860; A Study of the Origins of American Nativism* (Macmillan Co., pp. viii, 514, $5.00) is a scholarly and readable account of anti-Catholic and anti-foreign movements in the United States before the Civil War. The intolerance of colonial times, imported from England, gave way to the relative tolerance of our constitutional period. By 1830, anti-Catholic sentiment had revived. In the forties and fifties, this sentiment became united with that against immigration. The culmination of this development was the Know-Nothing movement, the political "flash in the pan" of the fifties. Not the least interesting part of the study is the unpleasant light in which many of the Protestant clergymen of the period appear. The violence and bloodshed in the cities during these times remind us of the intolerance and brutality found in totalitarian nations of today. The Civil War destroyed the anti-Catholic and anti-foreign movements as first-rate political factors. Professor Billington's work is well documented, has an excellent bibliography, and is to be commended to students of social psychology as a case study, by a non-Catholic, in mass reactions.—ROBERT W. MCCULLOCH.

In a series of papers under the title *Adult Education* (University of Kentucky, pp. 194), edited by Maurice F. Seay, the editor, George F. Gant, Mary Rothrock, and others describe the educational and training program of the Tennessee Valley Authority. Some of the aims and objectives of the program as set forth are: "(1) to enable employees to increase their efficiency on the job; (2) . . . to enable employees to prepare themselves for more responsible positions with the Authority; . . . (3) to contribute to employee understanding of the total program of the Authority." The part of the program most interesting to political scientists has to do with instruction in public administration. Courses are given at the University of Tennessee for employees, and 92 students out of a total of 264 are enrolled in courses in public administration. Some interne work in government is carried on also. The program of adult education further includes forum discussions for the workers. Since a large part of the pro-

gram of the T.V.A. deals with civic education and with instruction in political science, the pamphlet should be of considerable interest to political scientists.—CULLEN B. GOSNELL.

In *Your Community; Its Provision for Health, Education, Safety, and Welfare* (Russell Sage Foundation, pp. 249, $0.85), Joanna C. Colcord has prepared a work-book to replace Margaret F. Byington's pamphlet, *What Social Workers Should Know About Their Own Communities.* This new book, the author says, is intended for "members of civic clubs, forums, women's associations, parent-teachers' associations, or high school and college classes and graduate students." Miss Byington's device of asking questions to be answered by the research worker has been continued in a newly organized outline. The community study is to be "descriptive" not "evaluative." The third chapter deals with local government; there are questions about governmental functions in other chapters, but the information to be secured is largely in the field of social service administration. However, an up-to-date bibliography of about two hundred titles of books, articles, and pamphlets, together with a list of the names and addresses of ninety-one agencies, should make the outline more widely useful for reference purposes.—MONA FLETCHER.

An excellent addition to the rapidly growing literature on administrative technique and practice is Frances Priscilla De Lancy's *The Licensing of Professions in West Virginia* (The Foundation Press, pp. xiv, 197). In selected professions which are typical examples, the author analyzes the policy of the state in granting licenses, with special emphasis upon the relationship between government and professional occupations. The thesis developed is that the West Virginia licensing system is gradually approaching a guild control, and the writer examines the historical background, the legal, and the administrative problems of the system to show this trend. A valuable feature of the book is the large number of charts and diagrams and the well selected list of cases.—JAMES A. GATHINGS.

FOREIGN AND COMPARATIVE GOVERNMENT

In *The Second Tory Party, 1714–1832* (Macmillan and Co., pp. vii, 451, 15s. or $4.00), Keith Grahame Feiling carries his monumental history of the conservative tradition in British politics through the struggle over the Great Reform Bill. His second volume on this subject is really much more than is indicated by the title. Besides being a history of the Tory party, it traces the evolution of the Whig party and of the numerous personal followings of different politicians, and it casts new light on many phases of general political history and the biographies of the principal parliamentary leaders. It makes fascinating reading, and readers of it

will look forward to another volume by the same author bringing the story down to more recent times. The title calls attention to the author's thesis that there was a first Tory party that developed from the Cavaliers, flourished in Queen Anne's reign, and expired in the futilities of Jacobitism. Although there was a continuous tradition and some elementary framework of party, and a descent of political ideas in the eighteenth century, a second Tory party did not appear until one was forged by the Younger Pitt. This party, in turn, broke upon the rocks of Catholic emancipation and parliamentary reform amidst the storm of unrest and the clamor of ideas aroused by the French and Industrial Revolutions. The story proceeds almost wholly on the parliamentary scene, although the author takes full account of the social and economic movements impinging upon his chief actors, and he gives glimpses into the electioneering practices of the period. If any criticism of this brilliantly written book is to be voiced, it perhaps is that the author presupposes in his readers rather more knowledge than many are likely to have of general history and of the different parliamentary groups so constantly maneuvering in the making and unmaking of cabinets.—JOSEPH R. STARR.

A publication that bids fair to become an institution—and a valuable one—entered its third year with the recent issuing of the 1937 volume of the *Handbook of Latin American Studies* (Harvard University Press, pp. xv, 635, $4.00), edited, as were the preceding two volumes, by Dr. Lewis Hanke. The formal description on the title-page characterizes the volume as "a selective guide to the material published in 1937 on anthropology, art, economics, education, folklore, geography, government, history, international relations, law, language, and literature"; but that formula does inadequate justice to the wealth of material contained in the more than 4,000 items, many with critical comments, and more than 150 pages of special articles and notes on a wide variety of topics. Eight of the special articles deal with Brazilian matters, since this issue of the *Handbook* is dedicated to the Instituto Historico e Geographico Brasileiro in commemoration of the centenary of its founding. The thirty-two contributing editors, all specialists in their respective fields, have combined to make the *Handbook* an indispensable tool for any student working in the general Latin American field. The bulk, scope, and usefulness of the volume are greater than those of either of its predecessors, and the collection of successive volumes is increasingly recognized as setting a high standard of bibliographical excellence.—RUSSELL H. FITZGIBBON.

Public Finance of the U.S.S.R. (Evanston, Ill.: Chandler's, pp. 39, $1.00), by Paul Haensel, is a brief but valuable study of the fiscal system of the Soviet Union. The author has brought together into a single

pamphlet a series of separately printed articles. Six chapters present in detail the Soviet financial structure, as follows: Budgeting and Auditing, Taxation (sales, income, amusement, social security, pay-roll, unemployment, real estate, and other types of taxes), Fees, Customs Tariffs, Currency, Banking and Debt, and Insurance. A conclusion sets forth weaknesses and inefficiencies in Soviet finance, together with comment upon the 1938 budget. Professor Haensel's thirty years of experience with the Russian economic structure—in particular, his work as financial adviser to both Czarist and Soviet régimes—together with his many publications, furnish the background for the present work. It is the shortest, and at the same time the most scholarly, pamphlet on present-day Russian finance that has come to the reviewer's attention. It is well organized, concisely written, and fully documented by references to official newspapers and periodicals.—EDWARD W. CARTER.

Mr. James Truslow Adams has accomplished a remarkable feat of condensation, and yet at the same time has produced a book which is interestingly written, sound historically, and impartial. *Building the British Empire; To the End of the First Empire* (Charles Scribner's Sons, pp. xvi, 438, $3.50) traces the political, constitutional, economic, and social history of Great Britain and the Empire from its origins to 1783. The result might easily have been that the author would be submerged beneath an ocean of facts. In actuality, his gift for distinguishing the essential has produced a clear, well proportioned, and informative history of the development of the British race. Mr. Adams has a sound historical sense, and never falls into the not infrequent error of judging earlier periods by the standards of the post-war era. His brief sketches of outstanding national figures are vivid, and he traces clearly and convincingly the interaction of their personal contributions and the movements of their age in moulding the course of English history. He is particularly interested in the development of national characteristics; and while one may not always agree with him, his remarks are usually convincing.—LENNOX A. MILLS.

In *The Man Who Made the Peace: Neville Chamberlain* (E. P. Dutton and Co., pp. 147, $1.50), Stuart Hodgson, formerly editor of the *London Daily News*, sketches briefly the business and political career of the British Premier, but emphasizes chiefly his important rôle in the negotiations leading to the Munich agreement. Writing soon after Mr. Chamberlain's most significant achievement, the author makes no serious attempt to evaluate its consequences, but devotes his pages to a dramatization of the Premier's flights to Germany and the world-wide relief which followed the postponement of war. Under Mr. Hodgson's deft fingers, Mr.

Chamberlain appears, not the cold, rigid, and conventional English statesman he has usually been pictured, but a humanitarian tirelessly working for the maintenance of peace and receiving as a reward for his efforts the applause of a grateful world and recognition as "the whole world's hero." Mr. Hodgson tells us of Mr. Chamberlain's love of fishing, his interest in birds and gardens, and his happy family life, but very little about the real political and economic motives which determine his diplomacy.—ELMER D. GRAPER.

One of the most vital elements in Germany's progress toward autarchy is her grave deficiency in fats and oils. Karl Brandt's *The German Fat Plan and Its Economic Setting* (Food Research Institute, Stanford University, pp. xii, 344, $3.00) is a competent presentation of the whole economy of fats and oils in Germany prior to the Hitler régime as well as the far-reaching fat plan of recent years. Faced with a "fat-gap" of around sixty per cent of the national consumption, Germany has included as an integral part of her Four Year Plan a monopolistic governmental administration of the production and distribution of fats and their products. Despite this program, the author declares, "the farmer still has freedom of action in the domain of managing his farm" (p. 248). The book is written chiefly for economists and is amply interspersed with tables and charts. Where political implications cannot be avoided, a tone of objective impartiality is maintained.—VERNON A. O'ROURKE.

India is still England's great problem, if not the gravest. The Indian people are in ferment, and it is a question whether the full Constitution will go into effect in 1940 or be postponed. In his *Constitutional History of India* (The Indian Press, Ltd., Allahabad, pp. 409), Professor K. V. Punnaih, of the Andhra University, tells of the constitutional development of India from the early days of the East India Company to the present. The greater part of this timely volume is taken up with a description of the various political reforms since 1858. Professor Punnaih is on the whole objective. Yet he permits himself to conclude with the assertion that India will win "Swaraj or self-government within a couple of decades" and will be happy ever after as an equal partner with the other dominions of the British Empire.—SUDHINDRA BOSE.

INTERNATIONAL LAW AND RELATIONS

In *The Far East; An International Survey* (World Peace Foundation, pp. x, 353, $0.75), Professor Harold S. Quigley has revised and brought up to date Professor George H. Blakeslee's *The Pacific Area*, published in 1929 by the same organization. The names of both authors appear on the

title page, but Professor Blakeslee, in a brief preface, attributes to his collaborator all the credit for the work of revising and continuing the original text. In the interest of sound scholarship, Professor Quigley wisely decided against any attempt to deal with the undeclared war now raging in eastern Asia; therefore, except where his discussion of international efforts to settle the Manchurian controversy necessitated reference to the Brussels Conference, he has not carried the survey beyond July, 1937. Even with this limitation of the field, tremendous powers of condensation were needed in order to compress into 261 pages (the remaining space being devoted to the index and a 62-page appendix of important relevant documents) the essential facts underlying the Far Eastern situation as it is today, and the present reviewer is gratefully amazed at the success with which the task has been accomplished. Within the space at his disposal, Professor Quigley has not merely given an adequate and intelligible sketch of the Manchurian story, with its background and its repercussions upon relations among the several interested powers; he has also found room for a summary, but well-proportioned, discussion of foreign interests and treaty rights (tariff, extraterritoriality, leased territories, etc.) in China, of the present status and prospects of the Philippines and the Netherlands East Indies, and of the general naval and aëronautic situation in the Pacific Ocean. A wealth of bibliographical material, in the footnotes, opens almost unlimited vistas for further study in all these fields.—G. NYE STEIGER.

The pace of change in the Far East necessitates constant revision of such standard works as G. E. Hubbard's, *Eastern Industrialization and Its Effect on the West* (Oxford University Press, pp. xx, 418, $7.00). The revised edition preserves the general plan of the first but has involved a great deal of rewriting. The first chapter focuses attention on what, for the West, has been the significant immediate consequence of Eastern industrialization, i.e., Japanese competition in world markets. A general survey is followed by a study of the Japanese penetration of particular markets. The industrialization of Japan, China, India, and Great Britain, in that order, is then considered. In each case, a "brief history" of industrialization is followed by an examination of present conditions, and then a forecast of the future. The discussion of the future for China has, however, been cut short on account of the present struggle between China and Japan, which "changes so completely the prospect and renders the future so impenetrable" (p. 243). In the case of England, the general pattern is modified through concentration on the post-war position of the exporting industries (Chap. 2) and on the social consequences of the depression (Chap. 3). The study is concluded with "an economist's comment" by Professor T. E. Gregory. Sixteen tables and two appendices add to the

value of the book for the student. Those who have used the first edition do not need to have this revision urged upon them. They know that it is indispensable for the student of the development of the three Eastern countries covered. They know also the limit which the author has set for himself, but which is not clearly revealed in the title. The effects of Eastern industrialization on the West are examined only in relation to competition in non-European markets, and with particular emphasis on the position of England. Thus the study is more comprehensive and detailed in relation to the industrialization of Japan, China, and India than in relation to its effect on the West.—HAROLD M. VINACKE.

In *The United States and Santo Domingo, 1798–1873; A Chapter in Caribbean Diplomacy* (Johns Hopkins Press, pp. vii, 487, $3.50), Charles C. Tansill covers a more limited subject and a shorter period than Mr. Sumner Welles treated in his *Naboth's Vineyard*. His review of developments is also much more detailed than that found in the earlier work. The result is a thoroughly documented and judicial review of a series of events which has often had influence far beyond the West Indian area from which they sprang. Indeed, Dr. Tansill does not hesitate to follow the trail where it leads and thus fortunately draws into his discussions a number of marginal subjects which go beyond the limits of the title. Roughly the first half of the book is taken up with the seamy story of the relations with Santo Domingo in the period before the Civil War. The discussion in this section, of course, covers in generous degree not only relations with the government of what is now the Dominican Republic, but all of the island territory, and includes the conflicting diplomatic policies of France and Spain and of Haiti during the period of the Haitian servitude. The second half of the book, dealing with relations with the republic in the Johnson and Grant administrations, makes the more important contribution. The schemes of Casneau and Fabens are portrayed in high color. Seward's policies are analyzed pitilessly. Grant and his blunders and the resulting break between the President and Sumner are set out with great skill and from a broader background of source material than has been at the disposal of previous writers. The volume will be a standard reference for students of the Caribbean and for all those who are interested in the relationship of strong to weaker states.—CHESTER LLOYD JONES.

In *The Coming Struggle for Latin America* (J. B. Lippincott Company, pp. 401, $3.00), Carleton Beals paints a discouraging picture of the present situation of our relations with other countries of this hemisphere. He marshals an imposing array of facts and alleged facts to demonstrate that

other Powers—Germany, Italy, and Japan—are building up an influence there which can only be harmful to our interests. Some of what he says is true, and unpleasantly true. Much more, however, is at least open to question, and a not inconsiderable part is palpably incorrect. A suspicion that the author made little effort to check up on the accuracy of his material is borne out by numerous minor inaccuracies like misspellings and historical errors. The general impression which the book gives is unquestionably an inaccurate one and is, in fact, completely at variance with some of the statements which the author himself makes in his concluding chapter. There he points out, very sensibly, that Latin American dictatorships are not really "fascist," although he has elsewhere repeatedly stated that they are; and that alien ideologies in general are likely to meet with little sympathy among the Latin American peoples. Mr. Beals deals harshly with the past and present Latin American policy of the United States. Here again much of what he says is unpleasantly true, but what might have been a useful discussion of the factors that have prevented the establishment of better relations is spoiled by bitter and scurrilous denunciation and by an inclination to impute unworthy motives to everyone in official position.—DANA G. MUNRO.

Somewhat more than a year ago, a group of competent academicians and journalists from both sides of the boundary assembled on the north bank of the Saint Lawrence to discuss formally and informally, under the auspices of the Carnegie Foundation, subjects falling under the general head of Canadian-American affairs. The subsequently published *Proceedings of the Conference on Canadian-American Affairs Held at Kingston, Ontario, June 14–18, 1937* (Ginn and Company, pp. xii, 274) provides valuable source material for those students of foreign policy who would like to have a sound factual basis for evaluating the unique international relationship existing between the United States and Canada. One participant pointed out that "while ministers plenipotentiary and consuls come and go, . . . an army of 360,000 private individuals [daily] carry on those business and personal and social contacts between the United States and Canada that are the warp and woof of mutual understanding and good will" [p. 121]. Statements such as this indicate the general tone of the discussions, which tended, on the whole, to substantiate the view that the Dominion and the Republic form a North American *region*. It is the natural economic and cultural ties resulting from this primarily geographic factor that impress the observer rather than the more formal legal and political relations between the two countries. The latter are important, however, inasmuch as they bring the United States into contact with an independent "American" nation which is, nevertheless, part of the British Commonwealth. With such an anomalous status, Canada is peculiarly in

a position to act as "middle man" between this country and Europe.—RAY L. THURSTON.

Approximately one-third of the *Jahrbuch für Auswärtige Politik, 1938* (Berlin: August Gross Verlag, pp. xi, 516), edited by Dr. Fritz Berber, director of the Deutschen Institut für Aussenpolitische Forschung, and with a rather significant preface by Freiherr von Weizsäcker of the Foreign Office, is taken up with a series of essays. These begin with a general review of foreign relations for the year 1937 and continue with papers devoted to the foreign policies of Great Britain, France, Russia, and the United States. Two others concern themselves with the problems of the Far East and the Mediterranean, respectively. An eighth essay describes the organization of the NSDAP Bureau of the Foreign Office and its relation to German citizens resident outside the Reich. There is also a bibliography of the more important works in the field of foreign relations published during 1937 and a useful chronicle of events for the year. The volume contains, further, seventy-five pages of the more important diplomatic documents, not always so easily accessible. Here, too, may be found a directory of the various German governmental bureaus and of all diplomatic and consular officers accredited to the Reich, as well as of all German diplomatic and consular officers resident abroad. The volume concludes with a tabular résumé of commercial agreements and consular conventions in effect between Germany and other nations as of January, 1938. All in all, the *Jahrbuch* is a scholarly and useful work.—RAYMOND C. WERNER.

Professor Heinrich Rogge, who occupies a chair of political science at the University of Berlin, is well known in Germany for his works on international law, especially on the theory of national and international security. His comprehensive *Nationale Friedenspolitik; Handbuch des Friesdensproblems und seiner Wissenschaft auf der Grundlage systematischer Völkerrechtspolitik* (Berlin: Junker und Dünnhaupt Verlag, pp. 707, R.M. 12) was written for the purpose of establishing a "science of peace." The Emergency Foundation of German Science, the Abraham Lincoln Endowment, and the Stresemann Memorial Foundation have given the book their support; and it is dedicated to the memory of Professor Josef Kohler. The author has been successful in laying the foundation of such a new science. The volume—a second on the methodology of the science of peace is to follow—is very rich in material (German, English, American, and French sources predominate) which a clear organization and an excellent index make easily accessible. After giving a short survey of former attempts to establish such a science, Professor Rogge investigates the problem of how to establish peace by law. Therein he follows in the

footsteps of Kohler, who in his *Lehrbuch der Rechtspilosophie* regards as basic categories of a lawful peace organization of recognition of the right of self-defense, of protection of property, and of legal adjustment. He investigates these positive concepts in their influence upon the organization of peace. Then, following Kant's doctrine of the *Ehrliche Friedensvertrag*, he discusses the categories of honor and sincerity in their bearing upon the establishment of lasting peace. It is to be hoped that this valuable book will help to realize its author's objective of laying the cornerstone of a science of peace.—HUGO FERDINAND SIMON.

Recent popular interest in Latin-American relations should give Dr. W. R. Manning's able compilation of the *Diplomatic Correspondence of the United States: Inter-American Affairs, 1831–1860: X, The Netherlands, Paraguay, Peru, Documents 4477–5032* (Washington: Carnegie Endowment for International Peace, pp. xxxvii, 913, $5.00) a new and wider appeal. The tenth volume, containing largely routine correspondence, can serve to illustrate the difficulties which the United States may encounter in building up a commercial and military league in the western hemisphere. In the period covered, the government interested itself, for example, in the dispute between the Netherlands and Venezuela over the Aves Islands, and quarreled with Paraguay and Peru over the navigation of the Amazon and Paraguay rivers. Dictatorships, revolutions, and the rights of American entrepreneurs occupied most of the time of American diplomats in the two Latin countries, while in the remainder of their waking hours they kept a watchful eye upon French and British rivals for trade and prestige. Readers of these documents will often be reminded that the details of Latin-American relations have changed, but that the frame of the picture remains the same.—W. B. HESSELTINE.

Students of the relations among American states will find an indispensable reference work in *Conferencias Internacionales Americanas 1889–1936* (Washington: Carnegie Endowment for International Peace, pp. lviii, 746, $4.00). The text contains the treaties and other public acts connected with the first seven Pan American conferences, the American International Conference for Conciliation and Arbitration, and the Inter-American Conference for the Consolidation of Peace. There was published in 1931 under the same auspices a volume in English covering the period 1889–1930. These materials are now made available in Spanish, with the addition of the acts covering the developments to 1938. Appendices indicate the ratifications of the various agreements by the American republics down to May 24, 1938.—CHESTER LLOYD JONES.

In the third edition of his *History of American Foreign Relations*,

(Thomas Y. Crowell Co., pp. 744, $3.50), Louis M. Sears attempts again to combine a scholarly survey of American diplomatic history with a treatment of contemporary world events. The first edition, except for the last chapter, is incorporated in the third. The added and rewritten chapters reflect a perspective for passing events not comparable with the analyses of earlier statesmen. The work lacks close continuity of subject-matter of the last chapters with the original well-rounded text. An expanded bibliography and extended chronological table add to its value.—GEORGE C. ROBINSON.

POLITICAL THEORY AND MISCELLANEOUS

In *Plato Today* (Oxford University Press, pp. vii, 311, $2.50), R. H. S. Crossman discusses with brilliance, wit, and considerable insight the probable reactions of the Plato of the *Republic* to modern institutions—democratic, communist, and nazi. He urges that Plato would find modern democracy in fact undemocratic, would praise its means where they make for effective leadership, but would condemn its ends in so far as they are democratic; while in both communism and naziism he would find much to admire as far as propaganda techniques for gaining the consent of the masses are concerned, but would feel that they, too, pervert the true purpose of political institutions, which is to bring about the divine rule of philosophy or reason. Having shown that Plato is not a friend of the democratic régime, Crossman goes on to argue that from him there is to be gained no aid and comfort in the creation of effective institutions for the modern world, or in the more important task of formulating appropriate objectives therefor. Plato's hope for the rule of reason, achievable only by a minority, is both a false and an impracticable ideal, since it neglects the significance of human personality as such, a value made forever vital by Christ's teaching, while the attempt to get government by the enlightened Right either ends in chaos, through opposition both from the masses and from the money-bags, or succumbs to the unenlightened Right, and so becomes an instrument for fascist dictatorship. Essentially, it is necessary for us to turn from Plato, the aristocratic systematizer, to Socrates, the intellectual seeker; though to the present reviewer it seems that what Crossman really desires is the compound ideal of a Christ-Socrates, and that he is essentially a spokesman for the modern school of radical protestantism. This involves an undogmatic and non-institutionalized socialism which perceives the relevance of the inner light and of ethical ideals, and conceives of social-economic reform as a means to an end, thus avoiding the evils of mere materialism. But the positive content of Crossman's philosophy is not clear. He pleads for a spiritual revolt against dogmas and accepted institutions, and urges continuous

scepticism concerning *mores* and folkways. Yet as a conclusion to his brilliant biography of Socrates in the early part of his book, he himself states: "Condemning the death of the historical Socrates, each generation kills its own." The plea for a Socratic approach is a profound apology for martyrs; and no doubt our own world, like times past, needs them. Nevertheless, the martyr is inevitably an exception, and the Socratic philosophy offers no way of life, even for the majority of the educated. Far less is it a plan for social organization in a necessarily imperfect and unheroic world.—THOMAS I. COOK.

In the 1938 edition of his *Imperialism; A Study* (George Allen and Unwin, pp. 386, $2.75), J. A. Hobson incorporates a twenty-page introduction in which he reaffirms the basic position which he took in 1902 when the book was first published. Admitting that the "Great War" and the "Bad Peace" are to be regarded as contributing toward the peculiarly virulent nationalism and the dangerous international tensions of the present, he asserts, nevertheless, that the perils and disturbances of today "were all latent and discernible in the world a generation ago, and find their economic, political, and moral roots" in the imperialistic policies of the governments of the great industrial states. A firm believer in the principle of nationality, after the manner of John Stuart Mill, Hobson looks upon imperialism as "a depraved choice of national life," opposed to the general welfare but foisted upon deluded peoples by selfish interests seeking markets and fields for profitable investments. These special interests depend for popular support upon an "appeal to the lusts of quantitative acquisitiveness and of forceful domination surviving in a nation from early centuries of animal struggle for existence" (p. 368). Thus the common man, as well as imperialistic statesman, has supported a policy of imperialism from non-economic motives of pride and prestige, and because of an innate pugnacity; but the tap-root of imperialism is economic. Under the capitalistic system, the possessing classes secure an excess of income which cannot be profitably invested at home, and produce quantities of goods which cannot find a market within the country on account of the "mal-distribution of consuming power. . . . " If imperialism is the fruit of a "false economy of distribution," what is the remedy? Not socialism or communism, apparently. Basically, Hobson is an individualist. But he is also a humanitarian, and is prepared to put a curb on rugged individualism in order to secure a better distribution of income, cut the economic tap-root of imperialism, and remove one of the chief causes of war. Social reform, then, is the remedy. Raise the standard of consumption by removing unearned increments of income and adding them to the wage-income of the workers or the public income (p. 89).—FRANK M. RUSSELL.

When an executive officer sets out to analyze the nature of the executive function and the qualifications essential to executive success, students of administration may well hope that material for the enrichment of their field of knowledge will be forthcoming. Unlike many publications coming from such sources, Chester I. Barnard's *Functions of the Executive* (Harvard University Press, pp. xiv, 334, $3.50) is far from disappointing. About half of the book is devoted to an explanation of the author's theory of coöperation and organization. The other half deals more specifically with the functions and methods common to executives in all forms of organization, whether public or private, and the qualifications necessary to executive success. It is this latter part that is most original and of greatest value to students of public administration. The subject-matter of the book was presented originally in a series of lectures, and in that form frequent repetition of thought was undoubtedly necessary. But in spite of the great dependence of the author's thesis upon his oft-repeated explanations and illustrations of his concept of efficiency (which is defined as the measure of an organization's ability to induce individuals to contribute to the coöperative activity), the reviewer searched in vain for a convincing reason *why* such a unique and general definition should be given to a word which has a specific meaning in the technical fields. Might not careful revision have resulted in more convincing arguments and in less repetition of thought, as well as some improvement in literary presentation? The book should become a worthy contribution to a better understanding of the executive function; and after further verification and refinement of the major hypotheses (which task the author hopes others will assume), the contribution may serve to promote improved methods of training for administrative work and of selecting and advancing executive personnel.—Edwin O. Stene.

Recent Experiments in Constitution-Making (Upper India Publishing House, Ltd, pp. 354), by B. M. Sharma, was written "with a view, mainly, to providing more serious thought on our [Indian] problems rather than to produce a book of general interest." In an introductory chapter, Dr. Sharma points out seven of what he considers important factors and trends in a changing world which have affected the internal as well as the external existence of states: (1) the fight between the "haves" and "have nots"; (2) economic problems: (3) racial antagonism; (4) government conducted by a few; (5) extreme nationalism; (6) sacrifice of the individual to the state; (7) division of the world into two hostile camps—fascist and anti-fascist. Then he proceeds to discuss the recent experiments in constitution-making in Ireland, Germany, Italy, and Soviet Russia. Dr. Sharma has produced an interesting study. His work, however, might have been more valuable had he devoted somewhat less space

to political and historical matters, which, though not entirely irrelevant, detract from the main purpose of the book, namely, the study of recent experiments in constitution-making. Unfortunately, Dr. Sharma has hesitated to synthesize the results of his study, and the book suffers from the lack of a concluding chapter summing up modern constitutional problems.—BERTRAM W. MAXWELL.

Codified law in Germany has been under constant attack since 1933, for it contains elements of generality and rationality that run counter to the objectives of a totalitarian dictatorship. The tendency in recent German legal evolution is to replace the "dominion of the law" by the "dominion of the judge." The freedom of the judge, however, is to be understood only in its relation to the citizen, but not to the state. The purpose of Richard Benser's *Die Systematik des Privatrechts in Blackstone's "Commentaries on the Laws of England"* (Westholsteinische Verlagsanstalt Boyens Co., pp. 99) is to examine the problem of systematizing case-law as presented by Blackstone. It is pathetic to see Blackstone and the common law being adduced as witnesses (and cousins) of present-day Nazi judges and laws. This book was published under the auspices of the University of Kiel, and it is characteristic of what is left of the once leading German science of legal history that Blackstone is characterized as being unable to look beyond the "superficial aspects of things" (p. 16), and as having no sense of the "living growth of law" (*ibid.*)!—WILLIAM EBENSTEIN.

The German Reich and Americans of German Origin (Oxford University Press, pp. xiv, 45, $1.50) is a short collection of documents, a few of which have been previously published, and "is intended to expose the purposes of National Socialist propaganda outside the Reich." By means of thirty-three good translations of German laws, speeches of German leaders like Göring, Hess, and Bohle, and excerpts from newspapers, year-books, and official instructions, the reader is made aware of the danger of Nazi ideological and other intrusions into the American scene. In fact, the purpose of the volume is quite admirably achieved, however irritating its result may be in official German quarters. Fourteen eminent Americans, among them Henry L. Stimson, Nicholas Murray Butler, and Felix Frankfurter, have sponsored the little, but very attractively printed, book. The excerpts are presented without comment—except briefly in the preface—in English, and occasionally also in German on opposite pages. The book is a useful, albeit a provocative, addition to our knowledge of the National Socialist system.—JAMES K. POLLOCK.

RECENT PUBLICATIONS OF POLITICAL INTEREST
BOOKS AND PERIODICALS

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AMERICAN GOVERNMENT AND PUBLIC LAW

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(In the February, 1939, issue of the REVIEW, we noted the brief and exhibits of the government in the matter of the Port of New York Authority and the taxing by the government of its employees. Since the publication of the brief and exhibits, the state governments have been very busy, examining them word by word, and now publications in opposition are being issued. The above, prepared by Professor Lutz of Princeton, is one. Another, bearing the imprint: "The attorneys-general of the United States and counsel for certain of their municipal subdivisions," bears the title "The constitutional immunity of state and municipal securities; a legal defense of the continued integrity of the fiscal powers of the states" (1939), 420 p. Neither publication bears any imprint, but both were printed by the Bar Press, Inc., 47 West St., New York. The copies in the Columbia Law Library were presented by the Port of New York Authority. Both are careful, paintaking legal jobs.)

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